

# Exhibit 4

# Suffolk County Bar Association



## REPORT OF THE CIVIL RIGHTS COMMITTEE ON ALLEGATIONS OF POLICE BRUTALITY IN SUFFOLK COUNTY

E. THOMAS BOYLE, Chairman

KATHLEEN A. CARLSSON,  
SAUL FRIEDBERG,  
ERICK F. LARSEN,  
JOHN J. CIARELLI,  
EDWARD V. ESTEVE,  
GARY N. WEINTRAUB,  
FREDERICK K. HACKETT,  
ROBERT A. MARGOLIN,  
WARREN H. RICHMOND, III,  
STEVEN M. BEHAR,  
BERNARD BURTON,  
FREDERICK J. DAMSKI,  
JOSEPH R. MULÉ

## The Suffolk County Bar Association



**Frederic Block**  
**President**

**Vincent J. Hand**  
**President-Elect**

**Richard C. Cahn**  
**First Vice President**

**Gustave Fishel III**  
**Second Vice President**

**Joshua Pruzansky**  
**Secretary**

**John P. Bracken**  
**Treasurer**

Please address all correspondence  
to Association office at  
Suite 406  
4175 Veterans Memorial Highway  
Ronkonkoma, New York 11779

981-1600

**Sandra L. Lewis**  
**Executive Secretary**

THE FOLLOWING RESOLUTION WAS DULY  
ADOPTED BY THE BOARD OF DIRECTORS OF  
THE SUFFOLK COUNTY BAR ASSOCIATION  
BY A VOTE OF 10 TO 1 AT A SPECIAL  
MEETING HELD AT 4175 VETERANS MEMORIAL  
HIGHWAY, RONKONKOMA, NEW YORK, ON  
JANUARY 28, 1980 AT 7:00 P.M.

WHEREAS, the Board of Directors of the Suffolk County Bar Association having reviewed the report of the Civil Rights Committee relative to the allegations of police brutality in Suffolk County and having received the unanimous recommendation of the officers of the Association; and due deliberation having been had, it is

RESOLVED that the report of the Civil Rights Committee of the Suffolk County Bar Association relative to the allegations of police brutality in this County be and the same hereby is adopted and approved for public release, and

IT IS FURTHER RESOLVED that the said report is commended to the attention of the public, the County Executive, the District Attorney, Police Commissioner, the Sheriff of Suffolk County, the Presiding Officer and Minority Leader of the Suffolk County Legislature and the U. S. Attorney for the Eastern District of New York to the end that action may speedily be taken by the appropriate governmental authorities to redress the problem highlighted by the report with a view toward implementing its recommendations.

INDEX

I.	Introduction . . . . .	1
	A. National Law Journal Article . . . . .	2
	B. Task Delegated to the Civil Rights Committee . . . . .	3
	C. The Difficulty in Establishing Police Brutality . . . . .	4
	D. Public Hearings . . . . .	5
II.	A Problem Exists in Suffolk County With Respect to Police Brutality . . . . .	6
	A. The Involvement of the Suffolk County Human Rights Commission in Police Brutality . . . . .	6
	1. Brief History . . . . .	6
	2. Findings of Human Rights Commission - Pattern of Brutality . . . . .	9
	B. Experience of Members of Private Bar . . . . .	11
	C. Rising Number of Police Complaints According to Suffolk County Police Statistics . . . . .	15
	D. Civil Actions Resulting from Physical Abuse by Members of the Suffolk County Police Department . . . . .	18
	E. Federal Class Action - Police Brutality Suffolk County . . . . .	19
	F. The Smith and Rupp Cases . . . . .	22 , 27
	G. Seven Reversals by Court of Appeals . . . . .	28

III. Existing Procedures for Handling Complaints of Police Abuse, Deficiencies in Such Procedures and Recommendations . . . . .	30
A. Suffolk County Police Department . . . . .	31
1. Existing Procedures . . . . .	31
2. Deficiencies and Recommendations . . . . .	32
a) Civilian Participation in Police Discipline . . . . .	32
b) Training in Minority Customs and Attitudes . . . . .	35
c) Term of Police Commissioner . . . . .	36
d) Increased Availability of Complaint Forms . . . . .	37
e) More Stringent Sanctions . . . . .	37
f) Minority Recruitment . . . . .	39
g) Video-Taped Custodial Questioning . . . . .	39
h) Rubber-Lined Cuffs . . . . .	40
i) Inspection Unit Investigators Should Not Assist County Attorney . . . . .	41
B. District Attorney's Office . . . . .	41
1. Existing Procedures . . . . .	41
2. Deficiencies and Recommendations . . . . .	43
a) Assistant District Attorney Present During Custodial Questioning . . . . .	43
b) Instruction and Assignment of a Single Assistant . . . . .	44

c) Creation of Separate Investigation Unit . . . . .	44
d) Priority Concern - Police Brutality	45
e) Amendment to County Charter . .	46
C. FBI and United States Attorney . . . . .	46
1. Procedures - United States Attorney..	46
2. Procedures - FBI.....	47
3. Deficiencies and Recommendations .	48
a) Incomplete Investigation. . . .	48
D. Suffolk County Human Rights Commission	49
1. Procedure . . . . .	49
2. Deficiencies and Recommendations .	49
a) Investigatory Powers . . . . .	49
b) Investigation of Unsworn Complaints	50
c) County-Wide Jurisdiction . . . .	51
E. Suffolk County Bar Association . . . . .	51
1. Procedures and Deficiencies . . . . .	51
2. Recommendations . . . . .	51
a) Creation of Specialized Panel of Attorneys . . . . .	51
b) Efforts to Implement Recommendations Herein . . . . .	53
Conclusion . . . . .	53
Committee Vote . . . . .	55
Appendix Index . . . . .	56

# I. INTRODUCTION

In these times of rapidly increasing crime - especially violent crime - our police play an ever increasing role in protecting our lives and property. In relying on the police, however, we must be constantly vigilant never to lose sight of the rights guaranteed to our citizens suspected of, or arrested for, such crimes. Every person - rich or poor - regardless of the gravity of the offense, is entitled to fair treatment - free from bodily harm - along with all the other constitutional rights provided under the Constitutions of the United States and the State of New York.

The power to terminate a person's liberty by taking him or her into custody for the purpose of charging such person with a criminal offense is the most awesome and extreme power that government has over its citizens. In this respect no public officer has more power and authority than the police officer. History has repeatedly shown us the evils that flow from an attitude and course of conduct by persons in government who consider themselves above or beyond the law.\*

---

\* It is thus for good reason that our laws impose on police officers higher standards of discipline, character and fitness than pertain to other civil service employees. Matter of Alfieri v. Murphy, 38 N.Y.2d 976, 384 N.Y.S.2d 157 (1976). The position of peace officer is traditionally regarded as requiring a high degree of sensitivity and trust. Matter of Carmen v. Kirwan, 44 A.D.2d 613, 353 N.Y.S.2d 64 (Third Dep't. 1974).

A. National Law Journal Article

The inquiry by the Civil Rights Committee into police brutality in Suffolk County was occasioned by an article published in the National Law Journal on June 11, 1979. The article,\* written by Rafael Abramovitz, is entitled "When Suspects are Abused; Allegations of Beatings, Forced Confessions in a N.Y. Suburb are Widespread." It concludes that an "apparent pattern" of police beatings of suspects by members of the Suffolk County Police Department\*\* exists in Suffolk County.

---

\* A copy of the article is annexed hereto as Exhibit "A".

\*\* The Suffolk County Police Department covers the 5 western towns of Suffolk County with the exception of some of the villages within those towns, most of which maintain their own police force. The 5 eastern towns of Suffolk County have retained their police forces.

B. Task Delegated to the Civil Rights Committee

In July, 1979, the Officers and Directors of the Suffolk County Bar Association, delegated to the Civil Rights Committee of the Bar Association the task of examining the allegations of police brutality in Suffolk County and reporting its findings and recommendations to the Bar Association. More specifically, the Civil Rights Committee was requested to report on three main issues:

- 1) Is there "validity" to the complaints of police brutality in Suffolk County that the National Law Journal Article addresses, and, if so, do such complaints warrant further Bar Association activity;
- 2) Are procedures presently followed by the Police Department, the District Attorney's office and the United States Attorney's office adequate for rendering a proper, fair and impartial determination of issues involving police brutality in Suffolk; and
- 3) What, if any, role can the Bar Association play in this area.

C. The Difficulty in Establishing Police Brutality

The problem of police brutality is a difficult one to address. From the police perspective the persons who make complaints of physical beating are most often persons arrested on criminal charges who have made an oral or written admission to the crime which the prosecutor intends to use in the criminal prosecution. Since establishment of the beating would be grounds for suppression of the confession, the accused has much to gain by claiming police brutality and such claims are often viewed with skepticism by the courts and by prosecutors. In addition, those making such complaints often have extensive criminal records which tends to further undermine credibility.

The accused, therefore, has a heavy burden to establish that he was beaten. Making matters even more difficult, most of these incidents arise while the accused is in police custody and there seldom are any civilian witnesses present. Instead, the only witnesses are usually police officers who are hardly inclined to step forward and testify on behalf of the accused. Thus,

concrete evidence to support the defendant's contention is usually lacking and it therefore comes down to a sharp conflict of proof, with the testimony of the police invariably prevailing over that of the defendant. Where, however, there is concrete evidence, such as an independent witness to verify the defendant's assertions, a wide divergence in police testimony, or serious unexplained injuries to the defendant occurring while in custody, a defendant's chances of prevailing on this issue before a court or a jury are greatly increased.

#### D. Public Hearings

To develop information and ascertain the facts, the Committee conducted public hearings in the County Legislative Auditorium in Hauppauge on September 17th and 24th, 1979. Invitations were sent out to the public and to those agencies and officials having information relevant to the issues. Speakers included representatives of the Suffolk County District Attorney's office, the Suffolk County Police Department, the Suffolk County Human Rights Commission, the FBI, Civil Liberties, the Legal Aid Society, the NAACP, EOC and Union Hispanica. Members of the private bar and individuals with personal experiences also appeared and participated.\*

---

\* Annexed hereto is a list of persons who addressed the Committee. Any one present wishing to express his or her views was afforded the opportunity to do so. This list is marked "B."

II. A PROBLEM EXISTS IN SUFFOLK COUNTY WITH RESPECT TO POLICE BRUTALITY

There are several factors which point to what appears to be a serious problem in Suffolk County with respect to police brutality. Incidents too numerous to mention were brought to the attention of the Committee. The number of complaints filed, according to civilian and police sources, has steadily risen - often at an alarming rate. The Suffolk County Human Rights Commission - since 1972 the County agency responsible for referring such complaints to the Police Commissioner for investigation - reported that a pattern of brutality exists among "the poor and the powerless" or those perceived as such, often involving members of minority groups and young persons. This conclusion is supported by experiences of members of the practicing bar, and further support can be found in the decisions of our state and federal courts.

A. The Involvement of the Suffolk County Human Rights Commission in Police Brutality

1. Brief History

The Human Rights Commission was created by resolution of the then existing Board of Supervisors in 1963.

The enacting legislation empowered the Human Rights Commission to conduct studies in the field of human relationships in the County. In 1970, the Suffolk County Legislature extended the Human Rights Commission's jurisdiction - by Resolution 281 of 1970 - to create the Commission structure in its present form, and authorizing it to foster mutual respect and understanding among social, ethnic and religious groups, to make studies of such human relationships and to inquire into incidents of tension and conflict among such groups.

In 1972 County Executive Management Order 19-1972 was promulgated, which established procedures for handling citizen complaints of police misconduct against members of the Suffolk County Police Department.\* This resolution authorized the Human Rights Commission to screen and refer such complaints. It provides that the Commission

---

\* There is no provision on a County level for handling complaints arising on the East end of the County where the Suffolk County Police Department is not involved or in incorporated villages throughout the County. This is a deficiency which should be rectified, discussed infra at 51.

take a statement from the complainant under oath and then forward it to the Suffolk County Police Department for investigation. More specifically, Executive Management Order\* 19-1972 states that:

- 1) All complaints involving allegations of force by members of the Suffolk County Police Department - whether processed through the Human Rights Commission or not - must be in writing and sworn to by the victim;
- 2) The sworn complaint and any supporting documents must be personally filed with the office of the Police Commissioner.\*\*  
A copy of the complaint must thereafter be served on the County Executive's office, together with admission of service on behalf of the Police Commissioner;

---

\* County Executive Management Order No. 19-1972 is annexed hereto as "C."

\*\* Personal service on the Police Commissioner's office is a purposeless confrontation to a victim of alleged police brutality and likely to discourage the filing of such complaints. While this may be minimized in those situations where the complaint is processed through the Human Rights Commission, which can and does effect such service, it nonetheless leaves other victims responsible for seeing that personal service is made. Discussed infra at 37.

- 3) Thereafter the Police Commissioner shall initiate an investigation.
- 4) The Police Commissioner's decision, in writing, following completion of the investigation, shall be transmitted to the County Executive, the complainant and to the Human Rights Commission (where involved).

2. Findings of Human Rights Commission - Pattern of Brutality.

Based on its statistics back to 1972, the Human Rights Commission reported to the Committee that their evidence indicates that police misconduct is a serious and continuing problem in Suffolk and that there is an apparent pattern; to wit:

"The victims are usually poor and powerless, or are perceived in that light. Often they are members of minority groups\*, or they are youth."

Supporting this claim, Commission statistics reflect that 75% of all police complaints funneled through Human Rights occurred in the First Precinct (Babylon, Wyandanch, Amityville) and the Third Precinct (Bay Shore, Brentwood,

---

\* Members of three minority organizations agreed that police misconduct is a serious and continuing problem in their communities. Such representatives were Antonio Cotter, Union Hispanica; Don Price, EOC; and Ken Anderson, NAACP.

Central Islip) - areas containing the County's largest minority and poverty level population.\* The Commission further reports that while Blacks make up approximately 7% of the County's population and account for 22.8% of the arrests, approximately 50% of all complaints against members of the Suffolk County Police are from black citizens. In 85% - 90% of the cases, the complainant is reportedly from a poverty or low working class economic level.

The Human Rights Commission further claimed that the Suffolk County Police Department has an administrative policy and/or practice whereby ineffective police officers and/or those who are being subtly disciplined are assigned to high crime areas, such as the First and Third Precincts, where most of the minority groups are located. Thus, according to the Commission, persons in those areas often see the worst, rather than the best members of the Suffolk County Police Department.

---

\* These two precincts accounted for only 37% of the arrests (First Precinct 16%, Third Precinct 21%) in the county police district during the first 10 months of 1979.

The police representative confirmed that the majority of police misconduct complaints arise in the First and Third Precincts.

The Commission also reported that approximately 40% of all complaints of police beatings between 1972 and the present involve persons under the age of 25.

The Commission reports that since August 1972, when it began referring police complaints to the Suffolk County Police Commissioner - of the 311 complaints referred, approximately 3% resulted in departmental disciplinary action and the remaining balance of 97% were returned as unfounded or without sufficient cause for any disciplinary action.

B. Experience of Members of Private Bar.

Several attorneys practicing in Suffolk County have confirmed this pattern among the young and members of minority groups arrested on minor offenses, such as harassment, disorderly conduct and traffic offenses. They reported that such persons often complained of being roughed up, handcuffed with the cuffs tightened around the wrists in a manner that restricts blood circulation, and of the police striking their heads against the sides of the patrol car or being thrown face down on the ground. Paul FitzMorris, an attorney, stated that he actually witnessed such acts but did not intervene for fear of some reprisal. Another incident was personally witnessed by Ms. Guanil, Chairperson of the Human Rights Commission, who resides

in the Hispanic community in Brentwood. She too stated that fear of reprisal often discourages witnesses from complaining. Mr. FitzMorris further stated that in numerous cases there were hospital records which verified such injuries.

Paul FitzMorris provided first hand information with respect to the attitude of certain police officers. Mr. FitzMorris stated that two years ago he personally brought to the attention of the Police Department information\* that a "responsible senior officer" committed a crime in the attorney's presence. Affidavits supporting this allegation were provided to the Police Department. The attorney stated that he has never received a response, even though he made further written inquiry to the Deputy Commissioner.

Mr. FitzMorris expressed similar complaints with respect to complaints of police misconduct turned over to the District Attorney.

---

\* FitzMorris stated that for a period of several months after making such charges he received anonymous telephone calls in which the person on the other end would hang up. FitzMorris stated that the Internal Affairs detective involved in this case - who had an unlisted number - also received similar calls. The last of the 6-8 phone calls occurred on the same night that the windshield of FitzMorris' car was smashed while parked in his driveway. The police investigated but made no arrests.

He also asserted that invariably when a victim is injured by a police officer he is charged with resisting arrest or assault third degree. This pattern of charges was confirmed by the experience of other counsel. Where the injury is serious, Assault 2d degree - a felony carrying, upon conviction, a mandatory prison term of 3 to 7 years - may also be charged. The existence of such charges very often discourages an accused from making a complaint since to do so would reduce chances of resolving the case without a trial.

John Middlemiss, attorney in charge of the Legal Aid Society of Suffolk County, stated that there was no pattern of police brutality in the County and that existing procedures seemed adequate. Mr. Middlemiss stated that this position was not based on his own familiarity in this area, but instead on the answers to a questionnaire addressed to the staff attorneys in the criminal division, prior to appearing at the hearings. Despite the Committee's oral and written request, Mr. Middlemiss has failed to make the completed questionnaire available to the Committee.\* Arthur Keesler, Esq., an attorney with the criminal division of Legal Aid for approximately 10 years, and a member of the private criminal bar before that, contradicted

---

\* By letter, dated October 12, 1979, Mr. Middlemiss informed the Committee that "no useful purpose would be served by revealing documents forwarded to me [Middlemiss] at my specific request."

this position and stated that the questionnaire was not given serious consideration by most staff counsel, there being no explanation of the purpose of the information. Mr. Keesler stated that the questionnaire came in a pay envelope. The questionnaire was expected to be filled in and returned the following day. The questions were: is there a pattern of police brutality - are existing procedures adequate - and how can procedures be improved. Mr. Keesler stated that he and most other attorneys he spoke to answered "yes" to the question of whether a pattern of brutality exists in Suffolk and "no" to whether existing procedures were adequate.

Without the materials on which Mr. Middlemiss' position is based and faced with a contradiction by an attorney on the Legal Aid staff actively engaged in criminal practice in this County, and bearing in mind the manner in which the information was elicited, the Committee is reluctant to place great reliance on Mr. Middlemiss' statement.\*

---

\* We further note that the statement of Mr. Middlemiss is contradicted by every member of the private bar who appeared at the hearings.

C. Rising Number of Police Complaints According to  
Suffolk County Police Statistics

Records of the Suffolk County Police Department reflect an increasing number of citizen complaints against its members. Statistics supplied by Inspector Siegel of the Internal Affairs Unit\* are as follows with respect to complaints involving undue force:

1975	-	88
1976	-	43**
1977	-	51
1978	-	93
1979	-	(as of Sept.) 86

---

\* The National Law Journal article, which quoted Deputy Commissioner Petersen as its source, reports different - generally lower statistics - than those presented at the hearings by Inspector Siegel. The article states the following figures:

1977	-	46
1978	-	59
1979	-	(5 months) 60

\*\* The reason for the dramatic decline of police brutality complaints between 1975 and 1976 is not known. The Committee notes that the class action suit on Suffolk police brutality was tried in the federal court (E.D.N.Y.) in July, 1976, discussed infra at 19-21

Inspector Siegel presented statistics regarding disciplinary action in undue force cases for the years 1978 and 1979. Those figures reflect that 5 cases resulted in disciplinary action with respect to the 1978 complaints and none in 1979. While there are undoubtedly more police contacts as population and crime increase in Suffolk, as the Police Department representative, Inspector Siegel, pointed out, the Committee is not satisfied that this factor accounts for the steady and disturbing increase in the number of citizen complaints involving undue force, especially since, during this period there was not a doubling of either the crime rate or the population in these areas.\*

According to Inspector Siegel of the Suffolk County Police Department, there has been one indictment returned against a member of the Department involving

---

\* While Human Rights Commission statistics were not provided back through 1976 involving citizen complaints solely of undue force, their records for recent years reflect a similar consistent increase in the total number of overall citizen complaints (including physical abuse) against members of the Suffolk County Police over the same period:

1976	-	38	
1977	-	44	
1978	-	94	
1979	-	103	(to date of compilation, August-September, 1979)

excessive use of physical force.\*

The Committee further believes that the number of complaints filed may not reflect the number of incidents which could give rise to such complaints.\*\* There was testimony at the hearing that most of these police confrontations occur, as the Commission described, between "the poor and the powerless" or those perceived as such. Many may be ignorant of the available forms of redress and still others may be reluctant, for fear of reprisals, or because of the time required to be spent or because of the perceived futility, to pursue complaints against the police.

The police representative, Inspector Siegel, in charge of internal affairs, candidly stated that police attitudes - from the commanding officer level to the rank and file - need improvement in the area of the use of undue force. With commendable candor, Inspector Siegel also acknowledged room for improving existing police procedures for handling such complaints,

---

\* The spokesman for the District Attorney's office confirmed this. That case resulted in a not guilty verdict.

\*\* This is not to suggest that all such complaints are valid.

while maintaining, however, that such procedures were adequate.

D. Civil Actions Resulting from Physical Abuse by Members of the Suffolk County Police Department

The Committee has confirmed the settlements reached in those cases specifically referred to in the Abramovitz article.\* What the Committee finds particularly disturbing is that neither the Suffolk County Police Department nor the District Attorney's office apparently undertook any investigation and/or disciplinary action following the settlements in these cases.\*\* The same is true with respect to the \$190,000 jury verdict in the Quigley case.

- 
- \* These are: Crite v. Barry - \$18,000 (1978)  
Mills v. Suffolk County - \$5,000 (1976)  
Oquendo v. Suffolk County - \$15,000 (1978)  
Phillie v. Suffolk County - \$10,000 (1979)  
Mulligan v. Suffolk County - \$2,000  
Vocht v. Suffolk County - \$2,000 (1979)

The above cases were handled by Arthur Graseck, Esq. The case involving the \$190,000 jury verdict in favor of a man arrested for DWI and subsequently physically mistreated in the precinct lock-up was handled by Peter Reilly, Esq., and is presently on appeal before the Appellate Division.

- \*\* In addition to the above, the Committee has been apprised of at least one other civil action which has been settled by the County arising out of a physical abuse complaint by a person taken into custody on criminal charges (handled by Phillip Murphy, Esq., and settled for \$9,000).

In addition the Committee has been apprised of numerous other cases which are presently pending in federal and state courts involving claims of physical abuse.

E. Federal Class Action - Police Brutality Suffolk County

In 1976 a class action was filed in the federal court in Brooklyn by counsel for the NAACP Legal Defense Fund and Arthur Graseck, Esq. on behalf of 18 defendants alleging beatings and other due process violations by the members of the Suffolk County Police Department. The case - Coleman v. Klein, 73 Civ. 1857 - was tried before Judge Weinstein. The case was dismissed on July 21, 1976, by Judge Weinstein after several days of testimony by the plaintiffs. The dismissal was not on the merits, but rather was based on the Supreme Court decision in Rizzo v. Goode, 423 U.S. 362 (1976), which held that principles of federalism prevent the federal court from injecting itself into the internal affairs of a state agency, there the police department of the City of Philadelphia. Constrained to dismiss under the Rizzo decision at the end of the plaintiff's case, Judge Weinstein nonetheless made certain factual findings.\* Such findings, inter alia, are that a substantial number of cases were established where the Suffolk police used excessive force, that there was evidence of racist remarks by Suffolk police officers and that police internal discipline in police brutality cases is lax. More specifically,

\* Such findings were necessarily tentative since the Court granted the defense motion to dismiss at the end of the plaintiffs' case - before the Court heard the defendant's case.

Judge Weinstein stated that:

- (1) During the period from 1970 to the present, there have been a substantial number of cases where excessive physical force was used by some Suffolk County officers in arresting suspects, in questioning them to obtain oral admissions, and in punishing persons thought by some police officers to be showing what police officers considered a lack of respect or cooperation at the time of the arrest or questioning. These incidents included whites, blacks and Hispanics.
- (2) [D]uring the same period there have been a substantial number of cases where racial epithets were used by Suffolk County police officers against members of the black and Hispanic communities.
- (3) [P]rior to the tenure of the present County Executive, John V.N. Klein, Commissioner Eugene R. Kelly, and Inspector William L. McBride, attempts to discipline the police force to prevent brutality were lax. County Executive Klein has attempted to use his limited powers over the Suffolk County Human Rights Commission and the Suffolk Police Department to improve methods of handling complaints of police brutality and to insure proper investigation and discipline.

Police Commissioner Kelly and Inspector McBride have, during the last few years, devoted substantial efforts to improve relations with the minority groups of Suffolk County, individual complainants and the Suffolk County Human Rights Commission.

- (4) [W]hile the present situation is appreciably improved, substantial segments of the minority communities in Suffolk County feel abused by the Police Department with respect to the activities of some of the policemen, and lack confidence that their complaints will be fairly investigated, and that police officers found guilty of abuse will be prosecuted.

- (5) [T]here is a lack of prompt, adequate and dispassionate investigation of charges at the local level, and in Inspector McBride's office in internal disciplinary procedures, and in prompt reports to the complainants of the results of these investigations. Some complainants are discouraged from filing complaints and others fear to do so because of concern over retribution by some members of the police force.

Decision\* of Judge Weinstein, dated July 21, 1976 at 3-5 annexed hereto as Exhibit "D".

Based on the information available to the Committee, it appears that a serious problem still exists with respect to the excessive use of physical force and lax discipline of such conduct. It further appears that the remedial efforts noted in Judge Weinstein's decision have not appreciably ameliorated this problem, nor has the minority community's distrust of the fairness with which such complaints are investigated changed to any material degree.

---

\* The Court further found that there was no policy by supervising officials in Suffolk County e.g. the County Executive, to violate the plaintiffs' constitutional rights.

F. The Smith and Rupp Cases

The National Law Journal article refers to two cases wherein defendants in police custody were forced by the Suffolk County Police to confess to crimes they never committed: William Rupp to murder and Roland Smith to a robbery that never occurred.

The Committee has looked into both cases.

1. The Roland Smith Case

The case of Roland Smith involves a defendant arrested in Bay Shore (Third Precinct, Suffolk County Police Department) on a marihuana possession charge. According to Judge Seidell's written opinion\* the accused was taken into custody at approximately 11:45 p.m. on April 5th and thereafter was intermittently interrogated by detectives at the Third and at the Fourth Precincts during the entire day of April 6, 1977. The defendant was not brought before the Court until April 7, 1977. The Court found that during the period that the defendant was in custody at the Third Precinct he was physically coerced\*\* into admitting and signing a confession

---

\* Annexed hereto as Exhibit "E".

\*\* The police representative, Inspector Siegel, stated that Internal Affairs has never substantiated a coerced confession obtained by a Suffolk County police detective. According to John Mullen, Esq., Chief Assistant District Attorney, all adverse Huntley findings are referred to the Suffolk County Police Department for investigation.

to a crime which had never occurred. In addition, the Court suppressed two robbery confessions obtained at the Fourth Precinct on April 6, 1977. One confession resulted from interrogation before taking the defendant to Smithtown Hospital at 5:50 p.m. and one following his discharge at 7:18 p.m. Upon discharge from the hospital, the defendant was not taken to Court but rather back to the Fourth Precinct for further interrogation.

The following excerpts are findings of fact from Judge Seidell's decision:

Linda Smith informed detective Forrest that she knew that the defendant had committed a robbery at a Seven-Eleven store. She was not charged with the commission of any crime and she left the precinct at approximately 1:30 a.m.

The defendant was then given his MIRANDA warnings and defendant stated that he knew all about his rights since he had been arrested numerous times before.

The defendant denied being involved in any robbery. detective Forrest then called Linda Smith and requested that she return to the precinct. Linda Smith then returned to the precinct and was allowed to speak to her ex-husband alone. Linda Smith informed the defendant that if he did not confess to the Seven-Eleven Store robbery, she would be arrested and charged with possession of narcotics and that their son would be placed in a child protection agency.

The defendant was then again interrogated about the robbery and after using mental and psychological coercion and physical force upon this defendant, the defendant then signed a written confession, claiming that he committed a robbery on July 1, 1976 at a Seven-Eleven store on Ronkonkoma Avenue in Ronkonkoma.

This signed statement was executed about 5:30 a.m. Detective Forrest went off duty about 9:30 a.m. and the defendant was still hand-cuffed to a desk with bruises on his face and wrist and track-marks on his arm.

On April 6, 1977 at approximately 11:00 a.m. Detective Robert Harris was called by the Third precinct to interrogate this defendant. Detective Harris knew the defendant approximately four years prior to this date.

The defendant had not been arraigned on the active warrants, the possession of narcotics, nor the alleged robbery.

Detective Harris then arrived at the Third precinct at about 11:45 a.m. and questioned the defendant regarding a robbery of a Seven-Eleven store in October of 1976. After reading the confession of this defendant regarding the July 1, 1976 robbery, Detective Harris then decides to transport this defendant to the Fourth precinct for further interrogation. This defendant still has not been arraigned at the District Court for the charges for which he was arrested.

Detective Harris knew that this defendant had serious mental reservation about being locked-up in a station house jail. At about 12:05 p.m. the defendant is now in custody in the Fourth precinct.

Detective Harris knew that the alleged confession obtained from the defendant in the third precinct was false and that the defendant confessed to a crime which had never been committed.

The defendant was lodged in the fourth precinct jail at times during the interrogation without any clothes on since it was known that this defendant had mental problems and had the tendency to self-inflict injuries upon his person.

After constant interrogation, knowing the defendant had not slept from the time he was arrested, the police authorities, through detective Harris, then obtained a written confession from this defendant, confessing to a robbery at the Seven-Eleven store on Lake Shore

Road sometime early in October of 1976. All through the interrogation of this defendant it was visibly clear that he was suffering from the physical injuries sustained while in custody in the third precinct.

After obtaining the confession of this defendant, the defendant was taken to Smithtown General Hospital at approximately 5:50 p.m. for emergency treatment. The defendant was examined at the hospital and his injuries were diagnosed as multiple abrasions and he was discharged at approximately 7:18 p.m.

The defendant was then brought back to the fourth precinct, still not having been arraigned on any charges and detective Raymond Richmond of the fifth squad visits the fourth precinct to interrogate this defendant.

After a lengthy interrogation of this defendant regarding an alleged robbery at the MacArthur Motel on November 26, 1976, this defendant still, without any sleep, admits orally that he attempted to rob the MacArthur Motel on or about November 26, 1976. All further interrogation of this defendant is finally terminated.

On April 7, 1977 the defendant is finally transferred from the fourth precinct to the District Court for arraignment on all charges, including the outstanding warrants.

Detectives Harris and Richmond had given the defendant his MIRANDA warnings prior to their interrogation at the fourth precinct. (Emphasis in original)

The Court went on to hold:

It is undisputed that the defendant was mentally and physically coerced into admitting and executing a signed confession while being detained at the third precinct. Hence, any admissions or statements made to detective Forrest at the third precinct is hereby suppressed. People v Woodson 385 NYS 2d 998.

The defendant was interrogated at the third precinct from approximately 11:45 p.m. of April 5, 1977 until about 12:00 noon of April 6, 1977 without being arraigned. The defendant was transported to the fourth

precinct and further interrogated without being arraigned until the morning of April 7, 1977 at the Suffolk District Court. This defendant was clearly denied his constitutional right of being brought before a local criminal court without "unnecessary delay" and denied due process. The Court rejects the argument that the failure to arraign the defendant was due to a breakdown of the computer at the police station. People v. Malinski 292 NY 360; People v Holder 358 NYS 2d 54.

The defendant was subjected to continuous interrogation from the moment he was arrested on April 5, 1977 in violation of his constitutional rights. Leyra v Denno 347 U.S. 556; People v. Jennings 40 A.D. 2d 357.

(Emphasis in original)

The People have failed to prove beyond a reasonable doubt that the confession and admissions made by this defendant in the fourth precinct were voluntary or that there was a break in the casual connection between the first involuntary statement and the subsequent confession and admissions People v Valerius 31 N.Y. 2d 51.

Smith has filed a civil action in the federal court.

According to the civil complaint the beating lasted approximately five hours and included punches to the midsection, punches in the area of the kidneys and to the face, kicks to the groin, application of extreme pressure to the wrists with handcuffs, and banging Smith's head against the floor.

There is no evidence that the police officers involved have been disciplined, notwithstanding Judge Seidell's written findings of abuse.

Subsequent to the institution of the civil litigation, Mr. Smith reported that he has been harassed, along with other members of his family, including his

present wife and father-in-law. This harassment allegedly takes the form of telephone calls, as many as twenty a week, which are anonymous and include statements such as "you'll not live to spend one penny of any of the money that you get from this law suit." Additionally, the family has been called up at various times throughout the night and morning with questions about the location of the vehicle owned by his father-in-law and operated by Smith and indicating that it was involved in a hit-and-run accident.

Smith is now a CETA employee working with the County in its Department of Environmental Control and alleges that he has been harassed by the police who call him down on various occasions to answer questions about crimes committed in his neighborhood. Also, on one occasion he allegedly discovered five dead cats located in front of the County truck which he uses on his job.

2. William Rupp Case

The Committee is aware of allegations of a coerced confession in the William Rupp murder case. The indictment was dismissed on the District Attorney's motion on the ground that the defendant was not involved in the charge. Because of counsel's expression of concern with respect to a civil action which is pending and the lack of sufficient information we make no further comment.

G. Seven Reversals by Court of Appeals

The seven cases\* cited in the National Law Journal article concerning Court of Appeals reversals of convictions in Suffolk County have been examined. The cases form a very strong line establishing the absolute right to counsel. They make a boiler plate rule that once an attorney calls the police number and requests to speak to his client, who is in custody, the police cannot question that arrestee any further. The only time that an arrestee's right to counsel can be waived is if such waiver is undertaken in his attorney's presence.

---

\* People v Wander, 47 N.Y.2d 724, 417 N.Y.S.2d 245 (1979) reversing, 61 A.D.2d 1037, 403 N.Y.S.2d 111 (Second Dept. 1978)

People v Garofolo, 46 N.Y.2d 592, 415 N.Y.S.2d 810 (1979) reversing, 62 A.D.2d 1181, 403 N.Y.S.2d 608 (Second Dept. 1978)

People v Maerling, 46 N.Y.2d 289, 413 N.Y.S.2d 316 (1978) reversing, 52 A.D.2d 758, 382 N.Y.S.2d 214 (Second Dept. 1976)

People v Pinzon, 44 N.Y.2d 458, 406 N.Y.S.2d 268, 377 N.E. 2d 721 (1978) reversing, 52 A.D.2d 638, 382 N.Y.S.2d 563 (Second Dept. 1976)

People v Singer, 44 N.Y.2d 241, 405 N.Y.S.2d 17 (1978) reversing, 54 A.D.2d 915, 387 N.Y.S.2d 911 (Second Dept. 1976)

People v Macedonio, 42 N.Y.2d 944, 397 N.Y.S.2d 1002 (1977) reversing, 53 A.D.2d 809, 385 N.Y.S.2d 694 (Second Dept. 1976)

People v Hobson, 39 N.Y.2d 479, 384 N.Y.S.2d 419 (1976) reversing, 47 A.D.2d 716, 366 N.Y.S.2d 1003 (Second Dept. 1975)

Five of the cases cited in the article involved homicides. Of these, the recorded decisions (both Appellate Division and Court of Appeals) indicate that allegations of physical abuse were raised in four cases. In the Singer case the Court of Appeals decision notes that the defendant claims he was beaten with a phone book. In Pinzon the Second Department decision notes that the trial court found no evidence to support the defendant's claim that he had been beaten. In Maerling the Court of Appeals decision notes that the defendant claimed that he was beaten. In Wander the Appellate Division opinion, while not deciding the coercion issue because of overwhelming evidence of guilt, noted that the confession "may have been coerced."

The Court of Appeals did not reverse on the issue of coerced confessions, which, generally speaking, is an issue of fact which cannot be raised in the Court of Appeals. The cases do reflect, however, that counsel and family have not been afforded access to suspects taken into custody on criminal charges in Suffolk County.

III. EXISTING PROCEDURES FOR HANDLING COMPLAINTS  
OF POLICE ABUSE, DEFICIENCIES IN SUCH PRO-  
CEDURES AND RECOMMENDATIONS

---

This is not the first time that a question has been raised as to the adequacy of the manner in which police complaints are handled in Suffolk County. Special Prosecutor, Mr. Hoey, and his successor, the late Mr. Scotti, appointed by Governor Rockefeller in 1975 and 1976, respectively, also looked into this issue. With Mr. Scotti as its counsel, a special grand jury in 1976 made the following recommendations\* with respect to deficiencies in procedures:

- a) All allegations of criminal misconduct by members of the Suffolk County Police Department which result in an internal investigation by the Department should be referred to the District Attorney.\*\*
- b) The District Attorney's office should make a determination - based on a review of the police file - whether the Police Department recommendation of criminal prosecution or administrative action is appropriate in a particular case.

---

\* The report of the special grand jury is annexed hereto as "F".

\*\* This does not apply to the five eastern towns or to villages in Suffolk County that maintain their own police force.

While the special grand jury making this recommendation further recommended that appropriate legislation be enacted on the County level to implement its findings, the County Legislature has never done so.

According to police and district attorney spokesmen the special grand jury recommendations are followed pursuant to an informal agreement between the two agencies. This agreement, however, is not binding on either party and could be abandoned at will.\*

A. Suffolk County Police Department

1. Existing Procedures. Complaints of police misconduct in the Suffolk County Police are referred to the internal affairs unit. From there an investigation is carried out which reportedly consists generally in at least interviewing all parties involved.\*\*

The difficulty with this procedure is that when faced with conflicting versions of what occurred the police internal affairs unit invariably favors the police substantiated version and the complaint is reported as unfounded with generally no further

---

\* It was the special grand jury's finding that the police department was referring such cases to the District Attorney on a selective basis that led to the recommendation for legislation.

\*\* The police, however, are not required to respond under oath, although the complainant is.

follow-up by the District Attorney's office.\*

## 2. Deficiencies and Recommendations

### a) Civilian Participation in Police Discipline

There are several problems with the existing procedure.

It is not perceived by the public as a fair determination, but rather a one-sided one wherein the police will almost always prevail. This is so notwithstanding the fact that the decision in a given case may be an appropriate and impartial one. The public is skeptical - and rightly so - of the ability of any group or profession to discipline its own members.\*\* Secondly, and equally important, the basis of the results of such proceedings\*\*\* are not made public, which further reinforces the public's

---

\* This is probably the only area of law enforcement where diametrically opposed versions of what occurred invariably do not result in grand jury presentation. C.P.L. 190.65 sub. div. (1)

\*\* This led the Appellate Division to place non-lawyers on the grievance committee. Similar changes have been advanced or are under study in the medical profession. The police are subject to the same bias and partiality in disciplining their own.

\*\*\* The Human Rights Commission states that the County Executive's interpretation of Management Order 19-1972 is that a complainant has the right to meet with police authorities to obtain further details with respect to a disposition. It is reported, however, that the police interpret this narrowly and additional information is meager.

The Committee believes that additional confrontation with police should not be necessary to obtain such information, discussed infra at 37. We are advised that the police report to a complainant routinely states simply that "no substantiation for complaint can be found" or "the officer acted within the limits and scope of his authority."

preconceived notions of one-sidedness and eliminates scrutiny by complainants, other interested persons and the press.

Accordingly, the Committee, as a principal recommendation, recommends the establishment of the Law Enforcement Appeal Panel [LEAP].

The Board of LEAP would be comprised of thirteen members; seven members would be appointed by the Police Commissioner of Suffolk County with concurrence by the County Executive. No more than three of these appointees shall be active members and/or employees of a police department during their term of appointment. Six civilian members would be appointed by the County Executive, one residing in each precinct. LEAP would be provided with subpoena powers and authorized to conduct hearings on complaints of police misconduct. Its jurisdiction would be county-wide.

LEAP would function in the following manner:  
LEAP, upon receipt of a complaint, would investigate the incident utilizing the services of its own independent staff. Thereafter a report delineating the results of the investigation would be made.\* In those cases

---

\* The Committee believes that 30 days should provide sufficient time for this purpose.

which LEAP determines to be baseless, it shall, in writing, advise the police officer and complainant and, at the request of the police officer, shall make such finding public. In those cases which are not baseless, at the request of either party, LEAP shall conduct a hearing\* and thereafter make findings and recommendations. These recommendations shall be transmitted to the Police Commissioner and to the District Attorney. In those cases where police discipline is recommended the Police Commissioner, not later than 120 days, shall advise what, if any, disciplinary action has been taken.

Since LEAP's establishment involves an amendment to the Suffolk County Charter, the Committee refers this matter to the Charter Revision Commission for its consideration.

---

\* The Committee believes that the hearings should not be public but that the findings and recommendations should be made public if adverse to the police officer. Both sides should be entitled to appear with counsel and must be afforded an opportunity to be heard. A transcript of the hearing should be maintained as a permanent record.

The Committee further recommends the formation of local police community advisory boards at the six precincts within the county police district. The purpose of such boards would be to improve relations between the police and the local community.

b) Training in Minority Customs and Attitudes

Human Rights Commission observers report that in areas with large Black and Hispanic populations, the police are "indifferent to or misunderstand minority group aspirations, attitudes and customs." The Committee believes that police training should involve intensive cultural sensitivity to Black and Hispanic problems and mores, especially for those to be assigned to minority communities. The minority population of Suffolk County is steadily expanding. Much of this increase is attributable to persons moving out from the "inner city" areas of New York City. This increases the need for cultural sensitivity training by the police to better understand the attitudes, problems and mores of these new residents. The Committee sees an inadequate response to this inner-city migration by Suffolk Police. This can only add to the tension that already exists in these communities.

c) Term of Police Commissioner

The Police Commissioner's term - by County charter - extends beyond that of the County Executive. Presently the Suffolk County charter provides for a 6 year term for the Police Commissioner. The term of office of the County Executive is 4 years. The Commissioner is appointed by the County Executive, subject to confirmation by the County Legislature. The Committee believes that the Police Commissioner should be more responsive to the public - something which at present appears lacking. Under the present system, the Commissioner's responsiveness is directed to the persons under his command. Such persons, through the PBA, exert pressures on the Commissioner which are not adequately counter balanced by the needs of the citizenry with regard to police discipline. The lack of accountability to the public contributes to the present lenient discipline of Suffolk County police officers in complaints involving physical abuse.

The Suffolk County Charter Revision Commission is presently considering amendments to the Charter. The Committee recommends that the Revision Commission consider whether co-extensive terms would better serve the public's interest and further consider whether the Police Commissioner's term of service should be at the pleasure of the County Executive.

d) Increased Availability of Complaint Forms.

Complaint forms must be made more readily available.\*

A person should not have to return to the precinct where the police officer accused of criminal misconduct works in order to obtain a complaint form. Nor should personal service of the complaint be required. This too creates unneeded confrontation which serves to discourage a person from pursuing such matters. Similarly, the information provided to the complainant concerning the disposition of the complaint should be more detailed; such information should be routinely provided rather than only upon personal demand - as is the present procedure.

e) More Stringent Sanctions.

The Committee heard testimony involving the complaint that a police officer engaged in forcible sodomy with a woman in custody in a police patrol car. The Committee was informed by the woman's counsel that the police officer was permitted to plead to the reduced charge of conduct unbecoming a police officer and that the Police Department punished this police officer with a 30 day suspension and

---

\* In addition, the police should make the public aware that telephone and letter complaints will be accepted and investigated, as Inspector Siegel stated at the hearings.

a one year probationary status following a hearing.\* We are informed that it is undisputed that this act occurred inside a marked Suffolk County Police car and that the Suffolk County Police officer at the time was on a tour of duty, armed and in full uniform. The Committee finds that the punishment meted out in this instance was wholly inadequate.\*\* A police officer who engages in such conduct should not be retained on the force.

The Committee recommends revision of that portion of the Suffolk County Charter which provides that, short of outright dismissal, the most severe punishment that can be meted out to a police officer is a 30 day suspension without pay. This provision does not allow adequate scope to impose appropriate discipline in many cases. Suspension for a period of greater than 30 days might well be warranted in a situation where absolute dismissal would seem too harsh. The charter should be amended to provide for suspension up to a period of 1 year.

---

\* The police have refused to divulge the specific acts which the officer admitted. However, it would appear that, at the very least, it involved participation in sexual activities, in a patrol car, during a tour of duty.

\*\* The woman is pursuing her civil remedies in a suit which is now pending in the federal court.

f) Minority Recruitment

The majority of the complaints of police abuse come from the more propulated areas of the County - the Babylon - Wyandanch area (1st Precinct) 40%; the Bay Shore-Brentwood area (3rd Precinct) 35%. These areas are the ones most heavily populated by such minority groups as Blacks and Hispanics. There must be minority recruitment to ease tensions in these areas. The Suffolk County Police Department is 99% white male. The Police Department representative stated that minority representation on the Suffolk County Police force consists of 5 Black policemen and 5 women police officers (all white).<sup>\*</sup> The Human Rights Commission representative stated that total minority representation does not exceed 25. A serious effort must be made to recruit minorities to the force.

g) Video-Taped Custodial Questioning

The Police Department of Suffolk County should videotape the questioning of any arrestee in police custody where the crime involved is a felony. Such statements would be entitled to greater credence whereas those that are not would be subject to greater scrutiny.

Such a requirement should not prove unduly burdensome to the police from a practical point of view as it is anticipated that some videotape equipment (for the purposes

---

\* The Suffolk County Police reportedly have received a federal grant of \$265,650.00 to recruit minorities.

of video arraignments\*) is expected to be available in every precinct house in Suffolk County by the 1st of April, 1980.

The Committee is informed that this proposal has met with successful implementation in Bronx County, where there reportedly was not as much equipment available at the inception of the program.

h) Rubber-lined cuffs.

The Police Department should be urged to explore the possibility of equipping all handcuffs with rubber coverings over that part of the handcuffs which make contact with an arrestee's wrist.

In many instances testified to before this Committee, an arrestee complained that the handcuffs used were too tight and that they bruised his wrists. We are informed that a great number of the claims received by the County Attorney's office involve injury caused by the policeman's use of handcuffs. The placement of rubber tubing over most of the area of the handcuffs would avoid such injuries. Moreover, it would also eliminate a factor which may predispose a person to complain about other - less onerous - aspects of treatment in police custody.

---

\* The Committee believes that the proposed practice of two-way video arraignments is a desirable one.

i) Internal Affairs Unit Investigators' Involvement in the Defense of Civil Actions

An intolerable conflict exists through the current practice of using police investigators from the Suffolk County Police internal affairs unit to conduct police administrative prosecution investigations as well as investigations relating to the defense of police brutality suits in which the Police Department and/or the County of Suffolk is a party defendant. The sole responsibility of officers assigned to the internal affairs unit should be to investigate complaints of police wrongdoing for internal disciplinary action and/or criminal prosecution by the District Attorney. To assign police officers from the same unit to defend the police in civil actions creates a conflict which distorts the units real purpose. Accordingly, the Committee recommends that police officers other than those in the internal affairs unit be assigned to the defense of civil actions.

B. District Attorney's Office

1. Existing Procedures

The Suffolk County District Attorney's office may become involved in the investigation of police brutality complaints by a complainant coming directly to the office. In such cases, the District Attorney's office takes a statement from the complainant and then refers the file to the police internal affairs unit for further investigation. The District

Attorney may also become involved where the complaint is related to an ongoing criminal prosecution. For example, where claims of brutality have been alleged by a criminal defendant as part of a motion to suppress a confession or results of a search, the prosecutor will inquire into the facts underlying the incident in order to respond to the motion. A similar inquiry takes place where claims of brutality are directed against a police officer whose testimony is needed before the Grand Jury in order to obtain a criminal indictment. In such cases, the prosecutor evaluates whether there exists sufficient cause to suspect that the officer himself committed a criminal act in relation to the incident. If sufficient cause is found to exist, the officer will be required to execute a waiver of immunity pursuant to CPL Section 190.45 prior to testifying.

Where the complaint is related to an ongoing criminal prosecution, the initial inquiry will be conducted by the Assistant District Attorney assigned to the case who will interview the police personnel involved. If the situation warrants it, a more complete investigation may be requested; however, that investigation rarely, if ever, is conducted by the District Attorney's office. Instead, the matter is referred to the Police Department internal affairs unit. That unit will investigate the matter internally and report back

to the Assistant District Attorney in charge of the Indictment Bureau. The head of the Indictment Bureau then reviews the inspection file and, if satisfied that the officer involved was not guilty of misconduct, the matter will be closed. Where misconduct is indicated, the matter is again referred back to the Police Department for disciplinary action. If it is felt that still further information is required, the Police Department again will be requested to provide same.

## 2. Deficiencies and Recommendations

The District Attorney's office as it presently operates does not act as an adequate check against police brutality.

### a) Assistant District Attorney Present During Custodial Questioning

The District Attorney is very seldom involved in the early stages of stationhouse custody where most allegations of brutality arise. The District Attorney's office should become involved in major criminal cases at the earliest possible juncture.\* The presence of an Assistant District Attorney at the time of interrogation - at least with respect to major felonies - would act as a powerful deterrent to police abuse and would also ensure that all relevant legalities are met.

This too constitutes one of the Committee's principal recommendations.

---

\* The Committee is advised that virtually every other prosecutor's office in the metropolitan area follows the recommended procedure.

Such a practice would have the additional benefit of aiding in the successful prosecution of a case to counter unfounded claims by the defense.

b) Instruction and Assignment of a Single Assistant

In most cases, an Assistant District Attorney addresses the problem of police brutality in the context of an ongoing criminal prosecution, where the focus is on that prosecution and not on the issue of brutality. Since the brutality issue is an obstacle to a successful prosecution, the tendency may be to ignore or disprove the brutality. In such instances an Assistant District Attorney must be mindful of his ultimate duty which is to administer justice. Should this conflict with his duty to obtain a conviction, the latter must yield. All assistants should be so advised. The Committee further recommends that a single experienced Assistant District Attorney be assigned total responsibility for the screening, investigation and prosecution of all police brutality complaints. Institutionalizing the District Attorney's involvement in matters of police brutality in this manner, would give a legitimacy and moral force to its commitment in this area. Moreover, it would involve the office on a regular ongoing basis in a uniform way and assist less experienced prosecutors in this difficult area.

c) Creation of Separate Investigation Unit

In referring matters of police brutality to the Police Department for investigation, the District Attorney

substantially reduces the likelihood of an impartial investigation of the charges. Regardless of the individual integrity of the police officials conducting the investigation, they are simply too close to the situation to be able to do so impartially. Considerations such as the reputation of the Department, personal relationships with the officers involved, or superiors, and civil liability of the individual and/or the County, are inseparably intertwined with the analysis of the incident. In a matter so serious as a criminal prosecution against a law enforcement officer, the investigation should be conducted by investigators assigned to the District Attorney's office. The District Attorney's office has its own staff of trained investigators who are independent of the Police Department and who are accountable to the District Attorney. A separate unit should be established for investigation of police complaints rather than referring such matters to the internal affairs unit of the Police Department.

d) Priority Concern - Police Brutality

The District Attorney and Police Department in Suffolk County, as in all counties, work together closely in the prosecution of crime. Assistant District Attorneys are in daily contact with police officers and detectives and a strong working relationship develops. The District Attorney must impress upon his assistants that notwithstanding this close relationship, the curbing of police misconduct is a priority

item. The Committee believes that it would be a strong deterrent to such incidents if the police are made aware that Assistant District Attorneys will not countenance police misconduct and that such matters will be thoroughly investigated and prosecuted. If this is not made a priority, and in Suffolk County the indication is that it is not, it will be the natural tendency of the Assistant District Attorney to be less than zealous in pursuing matters of police misconduct and the situation will worsen.\*

e) Amendment to County Charter

The Committee recommends that the County Legislature amend the County Charter to require that the Suffolk County Police Department refer to the District Attorney all complaints involving police brutality and other allegations of police misconduct, as originally recommended by the special grand jury.

C. United States Attorney and FBI

1. United States Attorney Procedures

Despite written requests for information, the United States Attorney's office for the Eastern District has not provided same. The Committee had requested information relating to office procedures for handling police brutality complaints and the number of such cases from Suffolk and other

---

\* Though the District Attorney's Office of Suffolk County has assured this Committee on numerous occasions that it is presently in the process of preparing a directive to the professional staff of the District Attorney's Office informing all Assistant District Attorneys that allegations of police brutality and police misconduct must be reported to (footnote continued on next page)

counties. The United States Attorney's office was the only law enforcement agency invited which declined to appear at the hearings. Accordingly, it is impossible to comment on their procedures.

2. Procedures FBI

The procedures followed in police brutality complaints, according to the FBI spokesman, Agent John Hanlon, are as follows: upon receipt of a police brutality complaint from a victim, or from his counsel, the FBI interviews the complainant and witnesses to the incident and then prepares an investigation report which is then forwarded to the local United States Attorney's office and to the Civil Rights Section of the FBI in Washington, D.C.

In police brutality complaints this report also includes a review of the complainant's arrest record. While the FBI stated that they invariably make contact with the local law enforcement agency involved in complaints of this kind, the police officer involved is interviewed by the FBI only if the agency involved is willing to make such person available for interview and the accused police officer is willing to submit to such an interview.

The decision on whether to commence a civil or criminal prosecution is made by the United States Attorney

---

footnote continued from page 46

a single administrator in the District Attorney's Office, a copy of that directive has not been supplied to the Committee as of the date of the publication of this report.

and/or the Department of Justice based on this report or any further investigative reports which the FBI may be requested to provide.

It appears that to date no federal prosecution - civil or criminal - has been initiated in the federal courts arising out of a complaint involving police brutality occurring in Suffolk County.

### 3. Deficiencies and Recommendations

#### a) Incomplete Investigation

It appears from the information provided to the Committee that the FBI's investigation of complaints of police brutality are often one-sided since they do not include an interview with the accused police officer unless both the police officer involved, and the agency by whom he is employed, are willing. An investigation which does not minimally include an interview of the police officer involved, in the Committee's opinion, does not constitute a professional and thorough investigation.

It is difficult to understand that following the procedure outlined above - which does not routinely include an interview of the policeman alleged to have committed the violation, but does include a statement by the alleged victim - no indictment or civil complaint appears to have been prosecuted by the federal government arising out of Suffolk County.

The Committee recommends that complaints involving police brutality be investigated as thoroughly and professionally as other criminal and civil matters falling within the jurisdiction of the FBI. Such an investigation should minimally include the interview of the local police officer or officers involved in the complaint, along with the complainant and any other witnesses.

D. Suffolk County Human Rights Commission

1. Procedure

As discussed in detail, supra at 6-8, the Suffolk County Human Rights Commission is merely a referral agency which funnels complaints to the Suffolk County Police Department for the latter's investigation and determination.

2. Deficiencies and Recommendations

a) Investigatory Powers

The Commission, as it presently exists, is powerless to deal with police brutality; nonetheless, it is perceived by complainants as the appropriate agency to turn to for redress. This mistaken perception by the public leads to further mistrust of government and further tension. The Committee's primary recommendation is LEAP and local police advisory boards made up in part by civilians. It is recommended that LEAP be provided with subpoena powers and be authorized to conduct hearings.

If this recommendation is not adopted the Committee believes that the Human Rights Commission of Suffolk County should no longer be simply a referral agent for such complaints. It should be empowered to conduct its own investigations in the area of undue force, since such cases involve a claim of deprivation of civil rights, i.e. the due process right of every citizen to be protected from harm by those acting under color of State and/or local law. The broadened powers should include the authority to conduct hearings and subpoena witnesses, as is presently done by its Nassau County counterpart. The Commission, based on its findings, should be empowered to make disciplinary recommendations to the Police Commissioner. In appropriate cases, the Suffolk County Human Rights Commission should be empowered to make direct referrals to the District Attorney.

b) Investigation of Unsworn Complaints

The Commission should be authorized to accept complaints by mail or telephone, as well as anonymous complaints for purposes of at least preliminary investigation.\*

---

\* This is existing procedure of the Civilian Police Review Board in New York City.

c) County-Wide Jurisdiction

The jurisdiction of the Commission should be extended to include police complaints arising in the East End towns and in villages throughout the County.

E. Suffolk County Bar Association

1. Procedures and Deficiencies

Other than the individual efforts made by a few attorneys - some tremendous efforts - the Bar Association and its members have failed to respond to the problem of police brutality in Suffolk County. Several persons appearing at the hearings expressed frustration and difficulty in locating counsel willing to undertake such a case. In some cases such efforts were futile. This difficulty was undoubtedly increased by the former practice of the Lawyer Referral Service to solicit the names of those not willing to undertake such cases, rather than establishing this as a separate category and encouraging counsel to participate.

2. Recommendations

a) Creation of Specialized Panel of Attorneys

Members of the Bar Association should be encouraged to handle cases involving complaints of police abuse. In particular, the Bar Referral Service should list this as a separate area and a comprehensive list of counsel willing and competent to undertake such cases should be available to the public.

The Committee is informed that currently police brutality complaints are referred to the category of cases designated "Human Rights".\* We are informed that this category is serviced by only three attorneys.\*\* In addition, under the category "Miscellaneous", one attorney has specifically volunteered to handle police brutality cases and such referrals are also made to that person. This makes up the sum total of attorneys available to the public, through the Lawyers Referral Service, for handling police brutality complaints. Greater participation must be encouraged by the Bar Association in this difficult and complex area of practice. This will ensure a wider choice of counsel and also serve to increase the effectiveness of those attorney's practicing in this area. As recently adopted by the Board of Directors, counsel accepting referrals in the area of police brutality should be required to attend special instruction by the Suffolk County Academy of Law to enable them to better serve the client.

---

\* Although there is a Civil Rights category, police misconduct cases are not so assigned. This too, however, has a relatively small list of volunteer counsel.

\*\* Two of whom are also listed under numerous other categories.

b) Efforts to Implement Recommendations Herein

The Committee further believes that the Bar Association should pursue the recommendations made herein in an effort to implement them.

CONCLUSION

For the reasons set forth above, although severely limited by the lack of any investigative powers, the Committee believes that sufficient evidence is present to indicate that there is a serious problem with respect to police brutality in Suffolk County and the manner in which such complaints are investigated and resolved. The vast majority of police brutality claims arise in the First and Third Precincts - areas with heavy minority concentrations. While the problem is more acute in those areas our conclusion is not so limited. The problem is one that appears to exist throughout the entire area served by the Suffolk County Police Department.\* The Committee accordingly urges the Bar Association of Suffolk County to endorse the findings and recommendations made herein.

The Committee further believes that inquiry in this critical area must be pursued by those agencies with the power to compel enforcement. In this regard, the Committee is aware

---

\* Insufficient information prevents the Committee from making any conclusion with respect to town and village police departments in Suffolk County.

of the current investigation by Department of Justice as well as the expressed interest of the United States House of Representatives to conduct hearings on this issue. The Committee stands ready to cooperate with these, and any other agencies, in attempting to improve this condition.

Dated: Smithtown, New York  
January 16, 1980

Respectfully submitted,

E. THOMAS BOYLE  
Chairman

Vote - Report of the Civil Rights Committee on Allegations  
of Police Brutality in Suffolk County:

In Favor

1. E. Thomas Boyle, Esq.
2. Kathleen A. Carlsson, Esq.
3. Warren H. Richmond, III, Esq.
4. Frederick K. Hackett, Esq.
5. Robert A. Margolin, Esq.
6. Saul Friedberg, Esq.
7. Stephen M. Behar, Esq.
8. Frederick J. Damski, Esq.
9. Joseph R. Mulé, Esq.
10. Bernard Burton, Esq.\*
11. Gary N. Weintraub, Esq.\*
12. Edward V. Esteve

Opposed

1. John J. Ciarelli, Esq.
2. Erick F. Larsen, Esq.

\* This vote does not indicate a formal position with respect to any issue which comes before him as a member of the Suffolk County Charter Revision Commission pursuant to a recommendation made herein.

INDEX TO APPENDIX

EXHIBIT

- A 1-4 National Law Journal article, dated June 11, 1979  
by Rafael Abramovitz
- B 1-2 Schedule of Speakers at Committee Hearings
- C 1-2 County Executive Management Order No. 19-1972
- D 1-8 Opinion of Judge Weinstein in Coleman v Klein,  
73 C 1857 (E.D.N.Y. 1976)
- E 1-4 Opinion of Judge Seidell in People v Roland Smith,  
Indictment Nos. 909 and 917 of 1977 (County Court,  
Suffolk County 1978)
- F 1-3 Report Number II of the Second Grand Jury of the  
Special and Extraordinary Trial Term of the  
Supreme Court

## Law Office Management Section—Pages 24-31

THE NATIONAL  
LAW JOURNAL

©1979 The National Law Journal

VOL. 1—NO. 39

FRI 6 31 50

The Weekly Newspaper for the Profession

MONDAY, JUNE 11, 1979

## When Suspects Are Abused

*Allegations of Beatings, Forced Confessions  
In a N.Y. Suburb Are Widespread; Cases Highlight  
Perils To Effective Law Enforcement*By RAFAEL ABRAMOVITZ  
Special to The National Law Journal

RIVERHEAD, N.Y. — William Rupp confessed to a murder he did not commit.

Roland Smith confessed to a robbery that had not occurred.

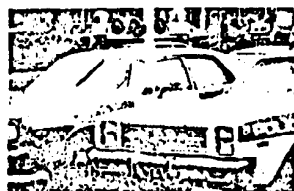
Both men claim that between their arrests and confessions they were subjected to prolonged beatings while handcuffed and in the custody of the

Suffolk County (N.Y.) Police Department.

There are two of many strikingly similar allegations of physically coerced confessions lodged in recent years against some members of the 2,500-person police force that patrols this county's semi-rural, middle-income suburb of New York City.

The criminal charges against both Mr. Smith and Mr. Rupp have been dropped. In Mr. Rupp's case only after the real culprit turned up. Both Mr. Smith and Mr. Rupp are suing the police for damages.

Their cases are examples of an apparent pattern of brutality in some



police units, which can be traced back for almost a decade. The National Law Journal has confirmed the pattern through court records and interviews with dozens of lawyers, prosecutors and law enforcement officials.

These sources have disclosed more than 30 court cases involving similar accusations of police brutality to extract confessions. In four of these cases, attorneys say their clients have passed lie detector tests to support their accusations against the police.

Indeed, a case against actions by Suffolk police officers can be supported by the following statistics:  
Continued on page 14Air Crash  
Claims: New  
Rule Ahead?*Illinois Bill Would Let  
Suits over DC-10 Disaster  
Seek Punitive Damages*By JOSEPH R. TYBOR  
National Law Journal Staff Reporter

CHICAGO — A bill pending in the Illinois legislature could permit punitive damages in suits filed in the nation's worst air disaster, significantly increasing potential recoveries.

Currently, Illinois, like all but a handful of other jurisdictions, bars such damages in wrongful death suits.

If passed, the bill could add an important element to plaintiffs' claims in the May 27 crash of American Airlines Flight 191 here. Illinois law is expected to be applied in suits over the disaster. The bill's fate is uncertain, though it passed the Illinois House by a 131-13 vote 10 days before the fatal crash.

The measure, which contains a provision making it applicable to all suits pending at the time the act becomes law, would allow a jury to award punitive damages where misconduct which caused the death is shown to be "willful and wanton." Tort experts say that could be a hard standard to meet in the American Airlines crash suits.

## Change in Tort Law

The sponsor of the bill, Rep. Peg McDonnell Breslin, and others said the crash could have "quite an impact" around the country in overturning the entrenched rule against awarding punitive damages in wrongful death actions.

That's a change in the law plaintiffs' tort lawyers have been seeking for years.

"If ever a case lends itself to changing the traditional rule, this is it," said Robert J. Glenn of Philip H. Corboy Associates, P.C., the Chicago firm that  
Continued on page 11

## HIGHLIGHTS

Panther Raid Lawyers  
Seek \$513,000 p. 3

TWO RADICAL Chicago lawyers who got by on \$15 a week in the longest federal court trial in history are seeking \$513,000 in fees for winning an appeal in the case, a damage suit by Black Panthers over a 1969 police raid that ended with two Panther leaders dead.

Death of a Law Clinic:  
Study Shows Why p. 3

TOO MANY salaries, too much equipment, too little fee collection and a fateful court decision killed the 59th Street Legal Clinic in Philadelphia, a new study shows. The clinic was an American Bar Association experiment.

More Fuel in Feud Over  
Exclusionary Rule p. 5

A SECOND government study has concluded that the exclusionary rule hasn't had much effect on prosecutions. The U.S. Law Enforcement Assistance Administration-financed study of State and local crime cases backs up an earlier study of federal court criminal cases.

## Plus:

ESTATE PLANNING by Moore..... p. 32  
LAHOIT by Levin..... p. 33

Index Continued p. 2



## The Remarkable Mr. Fish

By GENE WEINGARTEN  
National Law Journal Staff Reporter

AMARILLO, Tex. — S.E. Fish is 102 years old. His law practice isn't what it used to be.

Reluctantly, at the urging of his family, the courtly little Texan began easing into semi-retirement last month. He moved into a smaller office, sold off much of his law library and began to accept only those cases that appeal to him.

It wasn't an easy decision for Mr. Fish, believed to be America's oldest practicing attorney. He really likes to work.

He has been at it for better than 70 years, ever since he set up practice here in the Texas panhandle in 1909. In those days Amarillo was part of the wild west. Gunslingers swag-  
Continued on page 12EXHIBIT  
A-1

## Legal Rate of Interest

WHAT IS the "legal" rate of interest imposed by statute in most states absent a written agreement specifying a particular rate? State-by-State, the biweekly comparison of key statutes, finds the prevailing rate varies from 5 to 8 percent, with 6 percent the most common  
See pages 18-19.

SIC 680869-0166

# Cops Cut Corners on Due Process

Continued from page 1

• In 27 of the 28 Suffolk County murder indictments obtained last year, the accused had incriminated himself either orally or in writing. That 97 percent confession rate is astonishingly high when compared with rates in other jurisdictions.

• In the last three years, one attorney has negotiated out of court settlements in six cases where persons alleged they were brutalized during interrogations by Suffolk County police. The settlements totaled \$32,000. (See sidebar, page 14.) Other attorneys claim they settled many similar cases, but they declined to supply specifics. Also, in one case that went to trial, a man arrested by Suffolk police for drunken driving was awarded \$190,000 for permanent injuries he sustained while in police lockup.

• Since June 30, 1977, at least six Suffolk County criminal convictions have been overturned by the state's highest court because of improper police tactics. (See story, page 14.) Although New York law makes it almost impossible for an appeals court to challenge a confession once it has passed a suppression hearing, the Court of Appeals found in all six cases that the defendants' constitutional rights had been violated during suspiciously long periods of police questioning without presence of counsel.

• The number of complaints against the Suffolk police for the use of undue force is sharply on the rise. According to Deputy Police Commissioner Charles S. Peterson, 46 complaints were forwarded to internal affairs division in 1977, 59 last year and 60 during the first five months of this year.

In most of the cases settled out of court or reversed on appeal, there has been a similarity in the type of torture allegedly employed: beatings administered with telephone books used as a cushion to avoid leaving telltale bruises, blackjacks used on the sole of the feet and other sensitive areas, kicks and punches to the genitals.

The alleged victims have included

blacks, whites and Hispanics.

Suffolk Police Commissioner Donald J. Dillworth was unavailable for comment. Deputy Commissioner Petersen said that while there may be isolated instances of police brutality in the county, there is no pattern of such activity.

Arthur Penny, spokesman for District Attorney Patrick Henry, said Mr. Henry would have no comment on any cases of police brutality or coerced confessions prior to his taking office in 1978.

On alleged brutality since 1978, Mr. Penny said the district attorney would not comment on whether investigations were in progress.

Interviews with past and present county law enforcement officials confirm that these tactics have been widely known or suspected among public officials here for years. Yet to date



there is no evidence that anyone has conducted or even called for an outside investigation of the police or their methods of interrogation.

What's happening in Suffolk points to what criminal law experts say is an increasingly troubling problem within law enforcement systems still reeling from *Miranda*-type restrictions on the pursuit and handling of criminal suspects.

"There was a two- or three-year hiatus in the confession rate after *Miranda* because police were unsure of the ruling and were reluctant to lose up a good case with an illegal confession," said former Senate Watergate committee chief counsel Sam Dash. Mr. Dash now heads the Georgetown University Law Center's Institute for Criminal Law Procedure.

However, he added, because of increased police sophistication in dealing with *Miranda* and a series of court

modifications in its scope, police and prosecutors have reverted to their pre-*Miranda* "compulsion" of topping off an investigation with a successful confession.

The experts say that some agencies, like the Suffolk police, have sought to assure confessions by cutting corners through overly aggressive questioning methods that trample personal liberties. And where such situations occur, they say, there is often a tendency by prosecutors to look the other way.

Such is the case in this county of 1.3 million people and a strong local government long known for its aggressive pursuit of crime. Several former local prosecutors told *The National Law Journal*, in tape-recorded interviews, that they and their colleagues routinely heard and ignored repeated stories of unprovoked brutality against suspects held for questioning.

Such methods are indisputably illegal. Why, then, have prosecutors permitted them to continue?

One former high-ranking member of the Suffolk district attorney's office, suggests that some prosecutors have developed an almost incestuous relationship with the police. Police and assistant district attorneys "drink together and go out to view the bodies together," he said. "They feel they are on the same team . . . and forget their relationship as officers of the court."

Another former prosecutor recalls one instance where he himself kept silent and prosecuted a man whom he knew had been "beaten to a pulp, beaten for hours" by homicide detectives.

Still another former prosecutor, James J. Cruise, said that in his experience, "I've come across many cases where there's very little to connect a defendant with a particular incident of crime, except the alleged admission and/or oral statements."

High-ranking members of the Suffolk County Sheriff's Department, who asked not to be identified, say that prisoners handed over to their custody by the county police frequently com-

plain of, and frequently exhibit signs of, having been abused.

Allegations that the Suffolk police use illegal methods of interrogation are not new.

In 1976, Nassau County lawyer, Arthur V. Graessck Jr. brought a class action on behalf of 18 defendants who alleged beatings and other violations of due process.

Continued on page 16

## 6 Brutality Suits Since '76 Settled By Suffolk Co.

SUFFOLK COUNTY paid out more than \$50,000 in settlements over the last three years to six persons who claimed they were beaten by police while undergoing interrogations.

In addition, a man whose hip was broken while in custody on a drunk driving charge was awarded \$190,000 by a jury in Riverhead, the county seat, in December 1978.

County Attorney Howard Packman cautions that it would be wrong to interpret each settlement as an admission of guilt by the county. But Mr. Packman refused to explain the county's motives in offering the cash settlements.

Below are listed each of the settled cases, the amount and year of the settlement and a brief description of the brutality allegations as contained in court papers. In each case, the plaintiff's lawyer was Arthur Graessck:

• *Crite v. Barry*, 1978, settled for \$18,000.

"Plaintiff was taken to the basement of the stationhouse by [several police officers] and was handcuffed to an overhead pipe. . . . The officer then 'proceeded to strike plaintiff on the head with a black-jack, while other officers punched plaintiff in the stomach and sides. Throughout the beating plaintiff was asked to confess to a number of crimes. When he refused, his trousers were removed and he was kicked and punched in the groin. . . . Plaintiff was hit on the soles of his feet with a cord, while [several officers] continued to punch and otherwise abuse him. One detective placed a revolver to plaintiff's head and threatened to kill him if he did not confess."

• *Mills v. Suffolk County*, 1976, settled for \$5,000.

"The plaintiff was driven to the third precinct stationhouse in the custody of a detective and three officers. . . . he was handcuffed to a chair with his hands behind his back. . . . [He] was beaten by the detective during questioning. . . . threatened with assault to his genitals if he did not make a confession. . . . The assaults sustained by the plaintiff included. . . blows on the shins and collar bone with a black-jack. . . blows about the head with a book and closed fists."

• *Oquendo v. Suffolk County*, 1978, settled for \$15,000.

"Assaults directly to the eyes, mouth, back, legs and other parts of the body. . . . claimant vomited blood on two occasions after the police beat him."

• *Phillie v. Suffolk County*, 1979, settled for \$10,000. Plaintiff's legs were "driven over by police car while in custody." Suffered a fractured ankle.

• *Mulligan v. Suffolk County*, 1977, settled for \$2,000.

Plaintiff alleged he was grabbed by throat and had his head beaten against a wall.

• *Yoch v. Suffolk County*, 1979, settled for \$2,100.

## Decisions in Suffolk Co. Cases Define Rights

### Police Conduct Led to 7 Reversals in 3 Years.

IN THE LAST three years, the New York State Court of Appeals, the state's highest court, has overturned six homicide convictions and one burglary conviction in Suffolk County because confessions were taken in the absence of counsel.

In so doing, the court has defined when criminal suspects' right to counsel begins in New York. The cases also led to the reported warning by one Court of Appeals judge to the Suffolk district attorney that all convictions with confessions would be closely scrutinized by the high court.

In the lead case, *People v. Hobson*, 39 NY 2d 479, decided May 4, 1976, Chief Judge Charles D. Breitler ruled that "once a lawyer has entered a criminal proceeding representing a defendant in connection with charges under investigation, a defendant in custody may not waive his right to counsel in the absence of counsel."

On June 30, 1977, the court in a memorandum decision overturned another Suffolk murder conviction on the basis of the *Hobson* rule. *People v. Macedonia*, 42 NY 2d 944.

#### The Singer Case

In *People v. Singer*, 44 NY 2d 241, April 8, 1978, Judge Sol Wachtler, writing for the court, ordered suppressed a confession taken in 1974 in the absence of counsel. Counsel, he found, had been retained in 1971 in the initial stages of the investigation of the murder case and had never been discharged. Judge Wachtler also questioned the three-year delay in prosecution of the case.

A month later, Judge Wachtler, in *People v. Pinzon*, 44 NY 2d 454, overturned a conviction for criminally negligent homicide on the basis that the defendant's

lawyer had not been able to reach him while he was being held by, and confessing to, the Suffolk police. "Once a person has been taken into custody, the burden is on the police to keep track of him and to establish and maintain procedures which will insure that an attorney representing him may communicate with him and with officials responsible for the investigation, without unreasonable delay," the judge said.

In December 1978, Judge Jacob Fuchsberg threw out another murder conviction. *People v. Maerling*, 46 NY 2d 289. The jailhouse confession was not spontaneous, the judge said, and therefore did not fall within a recognized *Hobson* exception. Further, he ruled, a declaration against penal interest made by a deceased witness was too unreliable to have been admitted at trial.

#### Two Cases This Year

This year, the court has reversed two other Suffolk convictions, again because attorneys were missing at the time the suspect confessed.

On April 3, in *People v. Garofalo*, 46 NY 2d 592, Judge Fuchsberg again commented on an attorney's difficulties in finding a client in police custody. "We now make explicit what was implied in *Pinzon*," Judge Fuchsberg said. "Good faith efforts made [by the police] to locate a defendant who is taken into custody does not absolve the police of their responsibility if their internal procedures are inadequate to keep track of those against whom the restraining hand and accusing finger of the state have come to rest."

And in *People v. Wander*, decided April 24, the court in a memorandum decision overturned a burglary and larceny conviction because the defendant's "right to remain silent was not scrupulously honored."

# Widespread Allegations Of Brutality

Continued from page 14

Although Judge Jack B. Weinstein of the U.S. District Court for the Eastern District of New York threw the case out on technical grounds, he did issue this finding:

"During the period from 1970 to the present, there have been a substantial number of cases where excessive physical force was used by some Suffolk police officers in arresting suspects, in questioning them to obtain oral admissions and in punishing persons thought by some police officers to be showing what police officers considered a lack of respect or cooperation at the time of the arrest or questioning." *Coleman v. Klein*, 73 Civ 1837.

Mr. Graseck handled six brutality cases known to have been settled in the last three years. A spokesman for the County Attorney, Howard Packman, would not explain why the county had settled any of the cases, but said it would be a mistake to assume a settlement is an admission of guilt.

In almost all of the instances of alleged brutality examined by The National Law Journal, the violence was said to occur during the questioning of suspects in major crimes. Most frequently cited were members of the 55-man homicide unit.

## 'A Joke'

Eric Naiburg, a Suffolk County defense attorney with extensive experience in criminal law, says local lawyers consider criminal confessions in Suffolk "almost a joke."

"There's always an admission," he said. "We have detectives that, as soon as we know [they're] on the case, we know there is an oral admission."

Said former Suffolk County District Attorney Henry O'Brien, now in private practice, "I feel frustrated. I don't think there's anything to be done to change things. The homicide squad has a lock on things."

Indeed, the county's 97 percent confession rate demonstrates the peculiar success the homicide officers have had in eliciting incriminating statements from suspects in custody.

New York City's Bronx County, for example, has a 35 percent confession rate in homicides. In that county, confessions are frequently videotaped to show they were not coerced.

A random sample of 63 homicide arrests in the city's Kings County (Brooklyn) in 1978 showed that only 20 percent involved confessions.

## Isolating the Suspect

In their vigorous pursuit of confessions, the Suffolk police have occasionally gone to unusual lengths to isolate a suspect for questioning.

Just last month, during an investigation into the murder of a 13-year-old, Smithtown, L.I., boy, John Plus, the homicide squad allegedly pulled in off the street and questioned several area teenagers for long hours while the youth's parents frantically telephoned around town to learn of their children's whereabouts.

There is a growing consensus among local defense attorneys and prosecutors that the rights of the youths may have been so seriously compromised that the chances of successful prosecution have been jeopardized. As of last week, no charges had been filed against any of the youngsters.

The police procedure criticized in



Some crime suspects have claimed they were beaten in this building, headquarters of the homicide squad of the Suffolk County Police.

Photo by Robert M. Klein

the Plus investigation is similar to that condemned by the state Court of Appeals in *Propp v. Garofalo*, 46 NY 2d 592, where a conviction was overturned because a lawyer was not able to contact a client being held by the police for questioning.

Either Suffolk County police brutality is on the rise or its victims are getting bolder in making brutality complaints.

Deputy Police Commissioner Peterson said that while 46 such complaints were forwarded to the department's internal affairs division for investigation in 1977, there were 59 the following year and 60 for the first five months of this year.

Mr. Peterson was unwilling to speculate on why the increase occurred or to discuss the disposition of any of the complaints. But he estimated

that "90 percent of such allegations" are unfounded.

Outside agencies have found the Suffolk police to be stubbornly reluctant to police their own members.

Philip Borrero, assistant executive director of the Suffolk County Human Rights Commission, a publicly funded civil rights group, says the group had "no cooperation whatsoever" from the police in tracking down alleged cases of brutality.

The group forwarded 57 brutality complaints to the police in the last three years. But according to Mr. Borrero, the police don't let the commission monitor the department's internal investigation of the charges, or look tough the case files afterwards.

According to a Human Rights Commission spokesman, the police have

substantiated so far three cases the three cases, the commission has no knowledge of any disciplinary action taken. A third officer has said to have been transferred to another division and "a notation was made in his file."

## A Thwarted Leak?

There was evidence that an "insider" was ready to blow the whistle on brutality last February.

At that time a veteran of the Suffolk police force filed a complaint with the Suffolk chapter of the American Civil Liberties Union, claiming he was being harassed by the department.

In the complaint, taken over the phone by an ACLU staffer, the

Continued on page 17

## William Maerling: A Recurring Story

AT 4 A.M. on Valentine's Day 1973, Suffolk County Police surrounded the Staten Island home of William Maerling, 39.

They knocked at the door, then arrested Mr. Maerling, a stocky, illiterate father of eight, for the murder of a reputed Suffolk bookie.

By 4:30 the following afternoon, the police held Mr. Maerling's confession. It was three pages long, in the handwriting of one of the interrogating officers. Just above the signature, the document said: "I have read this [statement]." The "I have read" was crossed out and replaced with, "This statement has been read to me."

The police were later to claim that the confession was voluntary.

At a hearing to determine the admissibility of his confession, Mr. Maerling testified about his treatment in police custody.

"I wasn't there for two seconds . . . and the next thing I know, Detective R. . . started picking up a telephone book and started beating me over the head with it. The next detective did the same thing. Then all I know is they started to make me strip. They kept me nude for the majority of the day, handcuffed behind."

He claimed that he had been systematically beaten and kicked for hours, at times lying sprawled naked on the floor while a number of officers beat the soles of his feet with blackjacks. One detective, he said, had threatened to extinguish a lit cigarette

in his ear but had failed when the burning end accidentally fell off.

And then came the moment of final persuasion, according to Mr. Maerling.

He said one of the detectives "tied a piece of paper to my [penis]. Him and two detectives picked me up and held me over this cutting machine in the file room and started cutting off the paper."

He said that at that point he agreed to sign any document they gave him.

At the hearing, the police officers denied it all. The judge believed the police, and the confession was admitted at Mr. Maerling's trial.

Primarily on the weight of that document, he was convicted of felony murder Jan. 8, 1974. In December 1978, the state Court of Appeals reversed the conviction, however, because a second confession was taken in the absence of counsel.

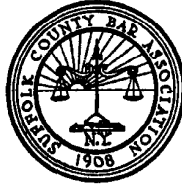
Two weeks ago his new attorney, Sara Halbert, arranged for Mr. Maerling to take a lie detector test about the circumstances surrounding his allegedly coerced confession. The test was administered by New York City polygraph expert Nat Laurendi, who has done extensive work for numerous law enforcement agencies here and abroad.

According to Mr. Laurendi, the test indicated Mr. Maerling wasn't lying when he claimed to have been beaten and tortured prior to his confession.

The Suffolk District Attorney's office has also given Mr. Maerling a lie detector test. A prosecutor told Mrs. Halbert that it was inconclusive. C

## SIC 680869-0169

# The Suffolk County Bar Association



## CIVIL RIGHTS COMMITTEE PUBLIC HEARINGS

SEPTEMBER 24, 1979

1:00 P.M. - 9:00 P.M.

Legislative Auditorium - Hauppauge

### SCHEDULE OF SPEAKERS

<u>TIME</u>	<u>NAME</u>	<u>ORGANIZATION</u>
1:00 p.m.	John Hanlon	Federal Bureau of Investigation
1:30 p.m.	Linda Margolin, Esq.	Civil Liberties Union
2:00 p.m.	John Mullen, Esq.	District Attorney's Office
2:30 p.m.	Shirley McGee	(self)
3:00 p.m.	Eugene Greaves	Suffolk Co. PBA President
3:30 p.m.	Donnie Price	Economic Opportunities Council
4:00 p.m.	Lynne A. Kramer, Esq.	Clients
4:30 p.m.	Arthur Graseck, Esq.	Attorney
	Jacob Leverich	
5:00 p.m.	Jabar Abdul Karim	Coordinator, Black United Front
5:30 p.m.	John Middlemiss, Esq.	Legal Aid Society of Suffolk County
6:00 p.m.	Rafael Abramovitz, Esq.	Wrote article in <u>National Law Journal</u>
6:30 p.m.	Henry O'Brien, Esq.	Former District Attorney
7:00 p.m.	Jody Adams	(self)
7:30 p.m.	James Fisher	(self)
8:00 p.m.	Sarah Halbert, Esq.	Attorney
8:30 p.m.	Paul Enrico, Esq.	Attorney

EXHIBIT  
B-1

SIC 680869-0170

# The Suffolk County Bar Association



## SCHEDULED SPEAKERS FOR SEPTEMBER 17, 1979 CIVIL RIGHTS HEARINGS

TIME	NAME	ORGANIZATION
9:30 a.m.	SILVERSTEIN, SAMUEL	(Self) Started an organization on prison reform
10:00 a.m.	JOHNSTON, HENRY	Executive Director Suffolk Co. Human Rights Commission
10:30 a.m.	GREAVES, EUGENE	Suffolk County PBA
11:00 a.m.	SIEGEL, ERNEST	Inspector - Internal Affairs Suffolk Co. Police Dept.
11:30 a.m.	GUANIL, ELIZABETH	Chairperson Suffolk Co. Human Rights Commission
12:00 noon	FITZMORRIS, PAUL	Attorney
12:30 p.m.	WERBA, MARIE	(Self)
12:45	DONELLY, THOMAS J.	(Self)
	ROSS, ELLEN	(Self) Social Worker

## COUNTY OF SUFFOLK



John V. N. Klein  
COUNTY EXECUTIVE  
August 31, 1972

COUNTY EXECUTIVE  
MANAGEMENT ORDER NO. 19-1972

SUFFOLK COUNTY HUMAN RIGHTS COMMISSION AND STAFF  
AND MR. JOHN L. BARRY, POLICE COMMISSIONER

TO: JOHN V. N. KLEIN, SUFFOLK COUNTY EXECUTIVE

SUBJECT: ALLEGATION OF USE OF UNDUE FORCE - SUFFOLK COUNTY POLICE PERSONNEL

---

Effective immediately, the following procedures shall pertain to the initiation and disposition of all complaints against members of the Suffolk County Police Department alleging the use of undue force by such personnel:

1. Any allegation of the use of undue force whether processed through the Human Rights Commission or otherwise, shall be reduced to writing and signed under oath by the alleged victim of the use of such undue force.
2. The executed original of such complaint shall then be personally filed with the office of the Police Commissioner together with any and all related documents pertaining to the allegation. The Police Commissioner or his staff at the time of personal delivery of such complaint to his office shall execute and deliver to the person filing such complaint a written receipt specifying the documents received as well as the date and time. Simultaneously, a copy of the complaint and a copy of all such supporting documents shall be filed with the Office of the County Executive at Hauppauge, together with a copy of the receipt signed by or on behalf of the Police Commissioner.
3. Upon receipt of a complaint filed in conformity with this order, the Police Commissioner shall initiate an investigation of the matter under established police procedures for such inquiries.

OLK COUNTY CENTER

HAUPPAUGE, LONG ISLAND, NEW YORK 11787

724-2300

EXHIBIT

C-1

SIC 680869-0172

Management Order No. 19-1972

August 31, 1972

to: Suffolk County Human Rights Commission and Staff  
and Mr. John L. Barry, Police Commissioner

Page 2

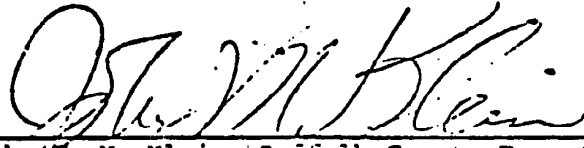
4. Upon conclusion of the investigation by the Police Department, and upon the completion of a determination by the Police Commissioner with respect to such case, a copy of such decision, in writing, shall be simultaneously forwarded to the complainant, the County Executive and the Human Rights Commission if said Commission acted on behalf of the complainant in filing the complaint.

Upon the receipt of a complaint filed in accordance with the above directives, the Police Commissioner may require of the complainant additional or supplementary statements in writing.

No County official, employee, department or agency possessing copies of any complaint of the use of undue force and/or any supplemental supporting documents shall with respect thereto release to anyone other than the Human Rights Commission, the Police Department or the County Executive the name, address, or substance of a complaint or supporting documents without the prior written authorization of the complainant.

The Police Commissioner shall reduce to writing for distribution to any interested party the specific procedures employed by the Suffolk County Police Department in the investigation and disposition of complaints of the use of undue force once properly led.

The Human Rights Commission and staff shall file with the Police Commissioner immediately, in accordance with the procedures outlined above, all complaints which the Commission now considers pending before the Suffolk County Police Department reportedly filed by the Commission or its staff between January 1, 1970, and the date of this Executive Order.

  
John V. N. Klein, Suffolk County Executive

HK:mrj

Appearances:

CHARLES WILLIAMS III, ESQ.  
ARTHUR GRASECK, ESQ.  
Attorneys for Plaintiffs

LEONARD WEXLER, ESQ.  
28 Manor Road  
Smithtown, New York  
Attorney for Defendants

1 THE COURT: This constitutes my opinion in  
2 the case.  
3

4 After presentation of the plaintiffs' case,  
5 the defendants have moved to dismiss the case.  
6 Based only on the evidence presented by the plaintiffs,  
7 and without having heard the defendants' witnesses,  
8 plaintiffs have established, prima facie, the  
9 following facts:

10 One, during the period from 1970 to the  
11 present there have been a substantial number of  
12 cases where excessive physical force was used by  
13 some Suffolk police officers in arresting suspects,  
14 in questioning them to obtain oral admissions, and  
15 in punishing persons thought by some police officers  
16 to be showing what the police officers considered  
17 lack of respect or cooperation at the time of arrest  
18 or questioning.

19 These incidents included whites, blacks and  
20 Hispanics.

21 Two, during the same period there have been  
22 a substantial number of cases where racial epithets  
23 were used by Suffolk police officers against members  
24 of the black and Hispanic community.

25 Three, prior to the tenure of the present  
County Executive, John V. N. Klein, Commissioner

1 Eugene R. Kelly, and Inspector William L. McBride,  
2 attempts to discipline the police force to prevent  
3 brutality were lax. County Executive Klein has  
4 attempted to use his limited powers over the Suffolk  
5 Human Rights Commission and the Suffolk Police  
6 Department to improve methods of handling complaints  
7 of police brutality and to insure proper investi-  
8 gation and discipline.  
9

10 Police Commissioner Kelly and Inspector  
11 McBride have during the last few years devoted sub-  
12 stantial efforts to improve processing of complaints  
13 and to improve relations with the minority groups  
14 of Suffolk County, individual complainants, and the  
15 Suffolk County Human Rights Commission.

16 Four, while the present situation is appreciably  
17 improved, substantial segments of the minority  
18 communities in Suffolk County feel abused by the  
19 Police Department with respect to the activities of  
20 some of the policemen, and lack confidence that their  
21 complaints will be fairly investigated, and that  
22 police officers found guilty of abuse will be  
23 prosecuted.

24 Five, there is a lack of prompt, adequate and  
25 dispassionate investigation of charges at the local  
level, and in Inspector McBride's office, in internal

1 disciplinary procedures, and in prompt reports to  
2 the complainants of the results of these investi-  
3 gations. Some complainants are discouraged from  
4 filing complaints and others fear to do so because  
5 of concern over retribution by some members of the  
6 police force.

7 Six, the proposed "Statement of Policy regarding  
8 police contacts with the public" of Police Commissioner  
9 Kelly and the Draft of Amendments to Chapter 5 of the  
10 Police Department, County of Suffolk or an equivalent  
11 would improve the situation by making clear to the  
12 public and to the members of the Police Department  
13 that the Suffolk County policy is to avoid excessive  
14 use of force, abuse and disrespect to civilians, and  
15 that serious efforts would be made and will be made  
16 to enforce this policy.

17 This proposed statement will be marked by the  
18 Court Clerk as a Court Exhibit at this time.

19 THE CLERK: Court Exhibit 3.

20 THE COURT: And made a part of this set of  
21 oral findings.

22 Seven, there is no policy on the part of the  
23 supervising officials in Suffolk County to violate  
24 the constitutional rights of plaintiffs. I am going  
25 to repeat that.

There is no policy, no policy on the part of

supervising officials in Suffolk County to violate the constitutional rights of plaintiffs. The frequency of the complaints indicate that they cannot be dismissed, however, as rare and isolated instances

All of these above findings of fact would, of course, be subject to revision should defendants' witnesses testify.

For the purposes of the motion to dismiss, the plaintiffs' case must, under the law, be interpreted in a way most favorable to the plaintiffs' contention

The following constitutes the applicable law:

The leading and controlling decision is that of the Supreme Court of the United States in *Rizzo versus Goode*, reported at 46 L.Ed., 2nd, 561; a 1976 case. In that case, the factual pattern established after a full trial was stronger than the one in this case. Some 250 witnesses involving some 40 incidents testified in that case.

In one year alone the District Court found 16 incidents in Philadelphia where police officers violated citizens' constitutional rights. Based on those findings of fact, the District Court and the Court of Appeals approved a comprehensive program for dealing adequately with civilian complaints.

The Supreme Court disapproved the order of the

1 District Court and stated among the other things 7  
2 the following, at 46 L.Ed., 2nd, page 573 to 575,  
3 and I am now quoting,  
4

5 "On the facts of this [Rizzo] case, not only is  
6 this novel claim quite at odds with the settled rule  
7 that in federal equity cases 'The nature of the  
8 violation determines the scope of the remedy,'"  
9 from Swann, "Important considerations of federalism  
10 are additional factors weighing against it."

11 I continue to quote, "The principles of  
12 federalism which plays such an important part in  
13 governing the relationship between federal courts  
14 and state governments, though initially expounded and  
15 perhaps entitled to their greatest weight in cases  
16 where it was sought to enjoin a criminal prosecution  
17 in progress, have not been limited either to that  
18 situation or indeed to a criminal proceeding itself.

19 "We think these principles likewise have  
20 applicability where injunctive relief is sought not  
21 against the judicial branch of state government, but  
22 against those in charge of an executive branch of  
23 an agency of state or local governments such as  
24 respondents here."

25 I continue to quote, "Contrary to the District  
Court's flat announcement that a federal court's

8  
legal power to 'supervise the functioning of the  
2 police department,' it is the foregoing cases and  
3 principles that must govern consideration of the  
4 type of injunctive relief granted here. when it  
5 injected itself by injunctive decree in the internal  
6 disciplinary affairs of this state agency, the  
7 District Court departed from these precepts."

8  
9 Then the Supreme Court said, "For the foregoing  
10 reasons the judgment of the Court of Appeals which  
11 affirmed the decree of the District Court is reversed."

12  
13 Dissenting from that decision, were Mr.  
14 Justice Blackmun, Mr. Justice Brennan and Mr. Justice  
15 Marshall. The majority of the Supreme Court, of  
16 course, controlled the decisions in this Court.

17  
18 Under the applicable law there is no alter-  
19 native but dismissal. Defendants' motion to dismiss  
20 is granted with no costs or disbursements.

21  
22 This constitutes the findings of fact and law  
23 by the District Court under the applicable rules of  
24 civil procedure. It is so ordered, and a final  
25 judgment will be entered by the clerk.

\* \* \* \*

**EQUITY COURT, SUFFOLK COUNTY**

Indictment Nos: 909-77; 917-77

THE PEOPLE OF THE STATE OF  
NEW YORK,

BY SEIDELL J.

VS

DATED March 22, 19 78

ROLAND SMITH,  
Defendant.

HON. PATRICK HENRY  
District Attorney, Suffolk County  
BRUCE A. SIKORA, ESQ., Of Counsel  
Criminal Courts Building  
Riverhead, New York 11901

SIBEN & SIBEN  
Attorneys For Defendant  
ROBERT E. QUINLAN, ESQ., Of Counsel  
90 East Main Street  
Bay Shore, New York 11706

This defendant is charged with robbery in the first degree under indictment no. 909-77 and attempted robbery in the first degree under indictment no. 917-77.

The defendant moves for suppression of admissions and confessions made to police authorities, claiming that said admissions and confessions were not made voluntarily.

The People have the burden of proving beyond a reasonable doubt that the defendant's admissions and confessions were made voluntarily.

The Suppression Hearing commenced on March 13, 1978.

The People called as witnesses detectives Thomas Forrest, Robert Harris Raymond Richmond and stipulated to testimony of Linda Smith. The defendant testified in his own behalf. The People called as a rebuttal witness, detective Gustov Carbonell.

I make the following findings of fact:

On April 5, 1977 detective Thomas Forrest received a telephone call from Linda Smith informing the detective that there were outstanding warrants against her and Roland Smith. The detective then verified that there were outstanding warrants and called Linda Smith back and was informed by her that she would be driving a 1972 Dodge in the vicinity of Main Street in Bay Shore that evening.

Detectives Forrest and Gustov Carbonell then drove to Bay shore in an unmarked car and waited. Detective Forrest subsequently saw a 1972 Dodge at about 11:30 p.m. proceeding on Main Street. He saw a female driving the car and a male passenger waving his arms in the car.

Detective Forrest stopped the car and requested identification from the driver. Roland Smith produced a license and registration. The male passenger gave his identification as one James Allen. A bottle was observed on the floor of the car. The defendant said that it was his and was placed under arrest for possession of marijuana. The defendant and Linda Smith were then taken to the third precinct at approximately 11:45 p.m. At the precinct a social security card was found on the defendant, indicating that he was Roland Smith and the defendant finally admitted his true identity. The defendant had four active warrants and was also charged with possession of narcotics.

EXHIBIT  
E-1

SIC 680869-0181

COUNTY- COURT, SUFFOLK COUNTY

Indictment Nos: 909-77; 917-77

PEOPLE OF THE STATE OF

BY SEIDELL J.

VS

DATED March 22, 19 78

ROLAND SMITH,  
Defendant.

Page #2

Linda Smith informed detective Forrest that she knew that the defendant had committed a robbery at a Seven-Eleven store. She was not charged with the commission of any crime and she left the precinct at approximately 1:30 a.m.

The defendant was then given his MIRANDA warnings and defendant stated that he knew all about his rights since he had been arrested numerous times before.

The defendant denied being involved in any robbery. Detective Forrest then called Linda Smith and requested that she return to the precinct. Linda Smith then returned to the precinct and was allowed to speak to her ex-husband alone. Linda Smith informed the defendant that if he did not confess to the Seven-Eleven store robbery, she would be arrested and charged with possession of narcotics and that their son would be placed in a child protection agency.

The defendant was then again interrogated about the robbery and after using mental and psychological coercion and physical force upon this defendant, the defendant then signed a written confession, claiming that he committed a robbery on July 1, 1976 at a Seven-Eleven store on Ronkonkoma Avenue in Ronkonkoma.

This signed statement was executed about 5:30 a.m. Detective Forrest went off duty about 9:30 a.m. and the defendant was still hand-cuffed to a desk with bruises on his face and wrist and track-marks on his arm.

On April 6, 1977 at approximately 11:00 a.m. Detective Robert Harris was called by the third precinct to interrogate this defendant. Detective Harris knew the defendant approximately four years prior to this date.

The defendant had not been arraigned on the active warrants, the possession of narcotics, nor the alleged robbery.

Detective Harris then arrived at the third precinct at about 11:45 a.m. and questioned the defendant regarding a robbery of a Seven-Eleven store in October of 1976. After reading the confession of this defendant regarding the July 1, 1976 robbery, Detective Harris then decides to transport this defendant to the fourth precinct for further interrogation. This defendant still has not been arraigned at the District Court for the charges for which he was arrested.

Detective Harris knew that this defendant had serious mental reservation about being locked-up in a station house jail. At about 12:05 p.m. the defendant is now in custody in the fourth precinct.

E-2

SIC 680869-0182

COUNTY COURT, SUFFOLK COUNTY

Indictment Nos: 909-77; 917-77

PEOPLE OF THE STATE OF

BY SEIDELL J.

VS

DATED March 22, 19 78

ROLAND SMITH,

Defendant.

Page #3

Detective Harris knew that the alleged confession obtained from the defendant in the third precinct was false and that the defendant confessed to a crime which had never been committed.

The defendant was lodged in the fourth precinct jail at times during the interrogation without any clothes on since it was known that this defendant had mental problems and had the tendency to self-inflict injuries upon his person.

After constant interrogation, knowing the defendant had not slept from the time he was arrested, the police authorities, through detective Harris, then obtained a written confession from this defendant, confessing to a robbery at the Seven-Eleven store on Lake Shore Road sometime early in October of 1976. All through the interrogation of this defendant it was visibly clear that he was suffering from the physical injuries sustained while in custody in the third precinct.

After obtaining the confession of this defendant, the defendant was taken to Smithtown General Hospital at approximately 5:50 p.m. for emergency treatment. The defendant was examined at the hospital and his injuries were diagnosed as multiple abrasions and he was discharged at approximately 7:18 p.m.

The defendant was then brought back to the fourth precinct, still not having been arraigned on any charges and detective Raymond Richmond of the fifth squad visits the fourth precinct to interrogate this defendant.

After a lengthy interrogation of this defendant regarding an alleged robbery at the McArthur Motel on November 26, 1976, this defendant still, without any sleep, admits orally that he attempted to rob the McArthur Motel on or about November 26, 1976. All further interrogation of this defendant is finally terminated.

On April 7, 1977 the defendant is finally transferred from the fourth precinct to the District Court for arraignment on all charges, including the outstanding warrants.

Detectives Harris and Richmond had given the defendant his MIRANDA warnings prior to their interrogation at the fourth precinct.

COUNTY COURT, SUFFOLK COUNTY

Indictment Nos: 909-77; 917-77

PEOPLE OF THE STATE OF

N.

BY SEIDELL J.

VS

DATED March 22, 1978

ROLAND SMITH,

Defendant.

Page #4

Conclusions Of Law: Under C.P.L. Sec. 60.45 a confession is inadmissible if involuntarily made. A confession is involuntary when obtained by physical or mental coercion or in violation of defendant's constitutional rights

The People bear the burden of proving beyond a reasonable doubt that the admissions or confessions are made voluntarily. People v Harrington 332 NYS 2d 789. Sec. 120.90 and sec. 140.20 of C.P.L. provide that an arrested person must be brought before a local criminal court "without unnecessary delay. Unnecessary delay in arraignment is only one of the factors to be considered with respect to voluntariness of admissions or confessions. People v Johnson 49 A.D. 2d 663.

It is undisputed that the defendant was mentally and physically coerced into admitting and executing a signed confession while being detained at the third precinct. Hence, any admissions or statements made to detective Forrest at the third precinct is hereby suppressed. People v Woodson 385 NYS 2d 998.

The defendant was interrogated at the third precinct from approximately 11:45 p.m. of April 5, 1978 until about 12:00 noon of April 6, 1978 without being arraigned. The defendant was transported to the fourth precinct and further interrogated without being arraigned until the morning of April 7, 1978 at the Suffolk District Court. This defendant was clearly denied his constitutional right of being brought before a local criminal court without "unnecessary delay" and denied due process. The Court rejects the argument that the failure to arraign the defendant was due to a breakdown of the computer at the police station. People v Malinski 292 NY 360; People v Holder 358 NYS 2d 54.

The defendant was subjected to continuous interrogation from the moment he was arrested on April 5, 1978 in violation of his constitutional rights. Levy v Denno 347 U.S. 556; People v Jennings 40 A.D. 2d 357.

The People have failed to prove beyond a reasonable doubt that the confession and admissions made by this defendant in the fourth precinct were voluntary or that there was a break in the casual connection between the first involuntary statement and the subsequent confession and admissions People v Valerius 31 NY 2d 51.

The defendant's motion for suppression is hereby granted in all respects.

This memorandum constitutes the decision and order of this Court.

Dated: March 23, 1978

E-4

*Harry E. Seidel*  
J.C. HARRY E. SEIDEL

SIC 680869-0184

SUPREME COURT OF THE STATE OF  
NEW YORK: COUNTY OF SUFFOLK

x

PEOPLE OF THE STATE OF NEW YORK

-against-

John Doe

:

:

:

:

:

x

REPORT NUMBER II OF THE  
SECOND GRAND JURY OF THE  
SPECIAL AND EXTRAORDINARY  
TRIAL TERM OF THE SUPREME  
COURT

TO: The Honorable Harold Birns  
Justice of the Supreme Court

The second Grand Jury of the Special and Extraordinary Trial Term of the Supreme Court, State of New York, in and for the County of Suffolk, conducted an investigation to ascertain whether the crime of Official Misconduct, a violation of §195.00 of the Penal Law, State of New York, had been committed. In the course of this investigation it was revealed that it had been the "tradition" of the Suffolk County Police Department "through the years" to decide in its "discretion" whether to report to the Office of District Attorney allegations of criminal misconduct concerning members of that Police Department or to conduct departmental disciplinary proceedings and not refer such allegations to the District Attorney's Office.

It was further revealed, according to the testimony, that as a result of a conference in March of 1976 held by representatives of

EXHIBIT  
F-1

SIC 680869-0185

of the Office of the District Attorney of Suffolk County, the Suffolk County Police Department and the Office of the State Special Prosecutor for Suffolk County, there was an understanding that, thereafter, the Suffolk County Police Department would refer to the District Attorney of Suffolk County "all allegations of criminal misconduct on the part of a police officer which result in an internal investigation by the Suffolk County Police Department."

#### FINDINGS

1. The Grand Jury finds that the Suffolk County Police Department had conducted disciplinary proceedings in certain instances involving allegations of criminal misconduct of police officers and did not refer these allegations to the District Attorney of Suffolk County.
2. The Grand Jury finds that the March 1976 agreement referred to above is not binding upon the Suffolk County Police Department and may be terminated by the police department at will.

#### RECOMMENDATION

The Grand Jury believes that it would be in the interest of the administration of justice to require legally the Suffolk County Police Department to refer to the District Attorney of Suffolk

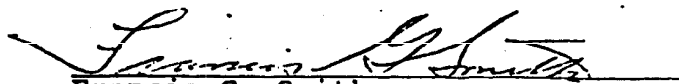
County any information which provides a basis for probable cause to believe a crime has been committed by a member of the police department. Accordingly, the Grand Jury recommends that the Legislature of Suffolk County consider the advisability of enacting legislation designed to attain this objective.

SUBMISSION

The Grand Jury requests that copies of this report be forwarded to:

1. The Presiding Officer of the Suffolk County Legislature.
2. The District Attorney of Suffolk County.
3. The Police Commissioner of Suffolk County.

Respectfully Submitted,

  
Francis G. Smith  
Foreman, Second Grand Jury  
of the Special and Extraordinary  
Trial Term of the Supreme Court